

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

JOSEPH A. SERGI  
Senior Litigation Counsel  
LAURA M. CONNER  
LANDON M. YOST  
Trial Attorneys  
U.S. Department of Justice, Tax Division  
555 4th Street, N.W.  
Washington, D.C. 20001  
(202) 305-0868 (Sergi); (202) 514-6438 (Conner); (202) 307-2144 (Yost)  
(202) 307-0054 (fax)  
joseph.a.sergi@usdoj.gov  
laura.m.conner@usdoj.gov  
landon.m.yost@usdoj.gov

Of Counsel:  
KURT G. ALME  
United States Attorney  
VICTORIA FRANCIS  
Assistant United States Attorney

*Attorneys for the defendants*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

STEPHEN C. BULLOCK, et al.,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE, et  
al.,

Defendants.

Case No. 4:18-cv-00103-BMM

**DEFENDANTS' MOTION TO  
DISMISS**

## **TABLE OF CONTENTS**

I. INTRODUCTION .....	1
II. BACKGROUND .....	3
A. The IRS may specify the information that tax-exempt organizations must supply on their information returns .....	3
B. With Rev. Proc. 2018-38, the IRS specified that non-501(c)(3) exempt organizations were no longer required to report donor information .....	6
C. Montana has not been receiving the return information of exempt organizations from the IRS, and has not satisfied the prerequisites necessary to request it.....	7
III. ARGUMENT.....	10
A. Plaintiffs lack Article III standing because they have suffered no actual harm and have no legally protected interest in receiving private donor information....	10
1. Governor Bullock and the Montana Department of Revenue have not established that they have legal authority to assert the State of Montana’s alleged interests .....	12
2. Plaintiffs’ alleged injuries are hypothetical.....	12
3. Plaintiffs have no legally protected interest .....	15
B. Plaintiffs lack statutory standing because they do not come within the zone of interests of any statute that authorizes their suit.....	18
C. Congress has committed decisions about what information to collect from exempt organizations to the IRS’s discretion .....	20
D. Rev. Proc. 2018-38 is an interpretive and procedural rule for which notice-and-comment procedures are not required .....	23
IV. CONCLUSION .....	26

## **TABLE OF AUTHORITIES**

### **Federal Cases**

<i>AICPA v. IRS</i> , 2018 WL 3893768 (D.C. Cir. Aug. 14, 2018) .....	24
<i>Ashley Creek Phosphate Co. v. Norton</i> , 420 F.3d 934 (9th Cir. 2005) .....	20
<i>Batterton v. Marshall</i> , 648 F.2d 694 (D.C. Cir. 1980) .....	24
<i>Boorstein v. Men’s Journal</i> , 2012 WL 2152815 (C.D. Cal. June 14, 2012) .....	17
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013) .....	13
<i>E.J. Friedman, v. United States</i> , 6 F. 3d 1355 (9th Cir. 1993) .....	22
<i>Facebook v. IRS.</i> , 2018 WL 2215743 (N.D. Cal. May 14, 2018) .....	18
<i>FEC v. Akins</i> , 524 U.S. 11 (1998) .....	17
<i>Gozlon-Peretz v. U.S.</i> , 498 U.S. 395 (1991) .....	16
<i>Havasupai Tribe v. Provencio</i> , 906 F.3d 1155 (9th Cir. 2018) .....	19
<i>Heckler v. Chaney</i> , 470 U.S. 821 (1985) .....	20
<i>Hemp Indus. Ass’n v. DEA</i> , 333 F.3d 1082 (9th Cir. 2003) .....	23
<i>JEM Broad. v. FCC</i> , 22 F.3d 320 (D.C. Cir. 1994) .....	25
<i>Lexmark v. Static Control Components</i> , 134 S.Ct. 1377 (2014) .....	18
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992) .....	10, 11
<i>Massachusetts v. Mellon</i> , 262 U.S. 447 (1923) .....	14, 15
<i>Match-E-Be-Nash-She-Wish Band v. Patchak</i> , 567 U.S. 209 (2012) .....	18
<i>Mendoza v. Perez</i> , 754 F.3d 1002 (D.C. Cir. 2014) .....	24
<i>Nw. Requirements Utilities v. F.E.R.C.</i> , 798 F.3d 796 (9th Cir. 2015) .....	19, 20
<i>PETA v. United States Fish &amp; Wildlife Serv.</i> , 2013 WL 12131726 (C.D. Cal. June 26, 2013) .....	17
<i>Virginia ex rel. Cuccinelli v. Sebelius</i> , 656 F.3d 253 (4th Cir. 2011) .....	11
<i>West Virginia ex rel. Morrissey v. HHS Dep’t</i> , 827 F.3d 81 (D.C. Cir. 2016) .....	14
<i>West Virginia v. HHS Dep’t</i> , 145 F. Supp. 3d 94 (D.D.C. 2015) .....	15
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990) .....	13
<i>Wilderness Society v. Rey</i> , 622 F.3d 1251 (9th Cir. 2010) .....	17

### **State Cases**

<i>Bullock v. Fox</i> , OP 18-0599 (Montana) .....	12
<i>McGrath v. Martz</i> , 2004 WL 2985143 (November 04, 2004) .....	12

## **Federal Statutes**

26 U.S.C. § 6033 .....	passim
26 U.S.C. § 501 .....	passim
26 U.S.C. § 6103 .....	passim
26 U.S.C. § 6104 .....	passim
28 U.S.C. § 1331 .....	19
28 U.S.C. § 1391 .....	19
5 U.S.C. § 553 .....	23
5 U.S.C. § 701 .....	20

## **Federal Rules**

Federal Rule of Civil Procedure 12 .....	1, 26
--	-------

## **Federal Regulations**

26 C.F.R. § 1.6033-2 .....	4, 5, 16, 21
26 C.F.R. § 301.6103 .....	7

## **Other Authorities**

Rev. Proc. 2003-21 .....	6
Rev. Proc. 2011-15 .....	4, 6
Rev. Proc. 2018-38 .....	passim
Rev. Proc. 80-44 .....	6
Rev. Proc. 83-23 .....	6
Rev. Proc. 94-17 .....	6
Rev. Proc. 95-48 .....	6
Rev. Proc. 96-10 .....	6
U.S. Const., Art. II § 2 .....	10

Defendants move to dismiss this action pursuant to Federal Rules of Civil Procedure 12(b)(1) and (b)(6) for lack of subject matter jurisdiction and failure to state a claim.

## **I. INTRODUCTION**

This lawsuit presents the extraordinary case of a state tax agency suing a federal tax agency in an attempt to dictate to the IRS the information that it must collect from federal taxpayers and turn over to the state for its own state purposes. It is even more exceptional because Montana has never before sought or received from the IRS the information plaintiffs are now trying to force the IRS to continue collecting, and because Montana lacks the ability to obtain this information from the IRS even if the IRS were to continue collecting it.

As a threshold matter, this action must be dismissed because plaintiffs—the Governor of Montana and the Montana Department of Revenue—lack Article III standing.<sup>1</sup> Plaintiffs have suffered no concrete or actual harm from the IRS’s decision because they have never before sought from the IRS the donor information that they now claim to need, and would have no legal right to the information even if the challenged Revenue Procedure were revoked. Plaintiffs

<sup>1</sup> As noted below, Governor Bullock and the Montana Department of Revenue have not established that they can sue in the name of the State of Montana and assert the State’s sovereign interests.

also lack statutory standing, because they do not fall within the “zone of interests” of any relevant statute that permits this suit.

The IRS’s issuance of Rev. Proc. 2018-38 would not be reviewable under the APA even if plaintiffs did have standing to bring this suit. First, Congress has explicitly committed decisions about what information to collect from exempt organizations to the IRS’s discretion, precluding APA review. In issuing Revenue Procedure 2018-38, the IRS<sup>2</sup> exercised its longstanding statutory discretion to determine what information it collects from organizations exempt from tax under 26 U.S.C. § 501(a) to meet its tax administration needs. The IRS specified that non-501(c)(3) exempt organizations no longer needed to supply it with the names and addresses of their donors (“donor information”). This exercise of discretion was nothing new: the IRS has repeatedly revised the reporting requirements for exempt organizations through revenue procedures, as permitted by statute and regulation. The most recent revision, Rev. Proc. 2018-38, resulted in the determination that the benefits of receiving this information, if any, were outweighed by the costs and risks associated with collecting and retaining it. Rev. Proc. 2018-38. That is well within the IRS’s statutory discretion to determine.

<sup>2</sup> For convenience Treasury and the IRS are referred to interchangeably and collectively throughout as simply the IRS.

Second, as to plaintiffs' claims that Rev. Proc. 2018-38 is subject to the APA's notice-and-comment procedures, this revenue procedure is an interpretive and procedural rule and those procedures do not apply.

## **II. BACKGROUND**

### **A. The IRS may specify the information that tax-exempt organizations must supply on their information returns**

In general, the Internal Revenue Code imposes federal taxes on all entities that receive income from any source. An exception applies for certain organizations that qualify under § 501(c) as one of 28 types of nonprofit organizations, including those that are organized and operated exclusively for charitable, educational, and other similar purposes (§ 501(c)(3)). These entities are largely exempt from federal income taxes, but must meet certain substantive requirements to qualify for tax-exempt status.<sup>3</sup> For example, § 501(c)(4) groups generally must be "operated exclusively for the promotion of social welfare." 26 U.S.C. § 501(c)(4).

In addition to the substantive requirements, § 6033 generally requires exempt organizations to file annual information returns on Form 990 "stating

<sup>3</sup> A § 501(c) organization is still subject to tax on its "unrelated business income." 26 U.S.C. § 501(b).

specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe.” 26 U.S.C § 6033(a)(1); 26 C.F.R. § 1.6033-2(a)(2)(i). For all exempt organizations other than those that have 501(c)(3) status (hereinafter, “exempt organizations”), the statute leaves it to the IRS’s discretion to specify what “other information” it needs to collect, including whether to collect donor information.<sup>4</sup> The statute also contains a discretionary exception allowing the IRS to relieve most organizations from filing an information return if the filing is not necessary to the efficient administration of the internal revenue laws: “The Secretary may relieve [most exempt organizations] ... from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws.” 26 U.S.C. § 6033(a)(3)(B). For example, pursuant to this authority, the IRS has relieved most organizations with typical gross receipts of not more than \$50,000 from the requirement to file an annual information return on Form 990 as long as they submit a Form 990-N e-Postcard annually in electronic format. Rev. Proc. 2011-15, 2011-3 I.R.B. 322 (January 17, 2011).

<sup>4</sup> For 501(c)(3) organizations, the statute requires the reporting of donor information. 26 U.S.C. § 6033(b)(5).



Prior to Rev. Proc. 2018-38, the IRS by regulation had required most exempt organizations to report on Schedule B of Form 990 the “names and addresses of all persons who contributed ... \$5,000 or more” during the taxable year. 26 C.F.R. § 1.6033-2(a)(2)(ii)(f). The IRS had also required by regulation that the exempt organizations described in § 501(c)(7) (social clubs), § 501(c)(8) (fraternal beneficiary societies), or § 501(c)(10) (domestic fraternal societies) report on Schedule B the names of each donor who contributed more than \$1,000 during the taxable year to be used exclusively for certain purposes, such as religious, charitable, or educational purposes. 26 C.F.R. § 1.6033-2(a)(2)(iii)(d). That same regulation also provides that “the Commissioner may relieve any organization or class of organizations ... from filing, ... in part the annual return required by this section...,” 26 C.F.R. 1.6033-2(g)(6), which is consistent with the statutory authorization for the Secretary to “relieve any organization ... from filing such a return,” 26 U.S.C. § 6033(3)(B).

Copies of the Forms 990 filed by exempt organizations must be made available to the public, but donor information on Schedules B is strictly prohibited from public disclosure. 26 U.S.C. § 6104(b). Thus, the IRS must redact this donor information before disclosing these annual returns to the public, creating the risk of

inadvertent disclosure of confidential donor information due to human or technical error.

**B. With Rev. Proc. 2018-38, the IRS specified that non-501(c)(3) exempt organizations were no longer required to report donor information**

The IRS has long revised reporting requirements for exempt organizations through revenue procedures.<sup>5</sup> Consistent with that practice, in the summer of 2018, the IRS issued Rev. Proc. 2018-38, which eliminated the requirement that non-501(c)(3) organizations report the names and addresses of substantial contributors. Rev. Proc. 2018-38 also eliminated the requirement that organizations described in §§ 501(c)(7), (8), or (10) report the names and addresses of persons who contributed more than \$1,000 during the taxable year to be used for exclusively charitable and other purposes. The instructions to the 2018 Schedule B to Form 990 incorporate these changes, and inform these organizations that they are no longer required to report the names and addresses of donors on this schedule. *See* <https://www.irs.gov/pub/irs-pdf/f990ezb.pdf>.

<sup>5</sup> *See, e.g.*, Rev. Proc. 2011-15, 2011-3 I.R.B. 322; Rev. Proc. 2003-21, 2003-1 C. B. 448; Rev. Proc. 95-48, 1995-2 C. B. 418; Rev. Proc. 96-10, 1996-1 C.B. 577. The IRS also has used this same process to completely exempt groups from the requirement to file Forms 990. Rev. Proc. 94-17; Rev. Proc. 83-23; Rev. Proc. 80-44.

Rev. Proc. 2018-38 specified that exempt organizations still must collect the donor information, maintain it, and make it available to the IRS upon request. Rev. Proc. 2018-38. Thus, the IRS fully maintained its ability to demand this donor information should the IRS determine that it was relevant.

**C. Montana has not been receiving the return information of exempt organizations from the IRS, and has not satisfied the prerequisites necessary to request it**

Although plaintiffs state that they need to obtain donor information from the IRS for Montana's tax administration purposes, Montana has not taken advantage of the mechanisms whereby it could request this information from the IRS.

Although § 6103 generally prohibits the disclosure of tax return information, there are different mechanisms through which a state may request return information from the IRS, once the state has met the safekeeping requirements established by the IRS. *See* 26 U.S.C. § 6103(p); 26 C.F.R. § 301.6103(p)(4)-1; IRS Publication 1075.

While plaintiffs do not cite this provision in their complaint, disclosure of Form 990 information is primarily governed by § 6104(c), which specifically addresses disclosure of this information to states. With respect to non-501(c)(3) exempt organizations, this subsection generally provides that the IRS "may" disclose returns and return information to an appropriate state officer upon written

request, but only to the extent necessary in administering state laws regulating the solicitation or administration of charitable funds or charitable assets of such organizations. 26 U.S.C. § 6104(c)(3).<sup>6</sup> As with disclosures under § 6103(d), discussed below, established IRS procedures for disclosures under § 6104(c) require a state to enter into a disclosure agreement with the IRS before it may make such a request. *See* I.R.M. § 7.28.2<sup>7</sup>; Declaration of Phyllis Grimes, ¶ 2. Montana does not have a § 6104(c) disclosure agreement with the IRS, and thus does not receive any information pursuant to § 6104(c).<sup>8</sup> *Id.*, ¶ 3.

The IRS may also disclose Form 990 information to Montana pursuant to § 6103(c), but only at the “taxpayer’s request.” 26 U.S.C. § 6103(c). Disclosures made under this subsection are part of a different joint federal and state program that provides that a taxpayer can consent to disclosure by designating another person to receive its return. *Id.*, ¶ 4. A state, however, may only participate in this program by executing a standard Memorandum of Understanding. *Id.* Montana has not done this for information specific to exempt organizations. *Id.*, ¶ 5.

<sup>6</sup> The disclosure of return information of § 501(c)(3) organizations is governed by 26 U.S.C. § 6104(c)(1) and (2).

<sup>7</sup> *See* [https://www.irs.gov/irm/part7/irm\\_07-028-002](https://www.irs.gov/irm/part7/irm_07-028-002).

<sup>8</sup> Affidavits may be submitted with a motion to dismiss for lack of jurisdiction without converting that motion to a motion for summary judgment. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989).

Section 6103(d), the provision cited by plaintiffs, also allows for the disclosure of certain return information to states, but it does not specifically authorize the disclosure of donor information. Pursuant to § 6103(d) states may make a written request for certain returns and return information by executing agreements with the IRS, which serve as the written requests required by this subsection. The IRS has executed § 6103(d) agreements with Montana, and they are attached as Exhibits 3 and 4 to the Grimes Declaration. These Montana agreements, however, do not provide for the disclosure of Form 990 series returns or any return information of exempt organizations. Grimes Decl., ¶ 7; Exs. 3 and 4 to the Grimes Decl. This is understandable because § 6103(d) only authorizes disclosure, upon written request, of returns and return information to state tax agencies “with respect to the taxes imposed” by the chapters named therein. 26 U.S.C. § 6103(d). Donor information of exempt organizations is typically not information with respect to taxes imposed by any chapter listed in this subsection. Thus, unless unusual circumstances were to cause an exempt organization to be subject to a tax imposed by one of these chapters and donor information to somehow be relevant to those taxes, the plain terms of § 6103(d) do not authorize disclosure of donor information to states, because this information is not information “with respect to the taxes imposed” by any chapter.

Finally, at the risk of stating the obvious, if a state determines that it needs this donor information, nothing prevents it from requesting this information directly from exempt organizations.

### **III. ARGUMENT**

#### **A. Plaintiffs lack Article III standing because they have suffered no actual harm and have no legally protected interest in receiving private donor information**

Article III of the Constitution limits the jurisdiction of federal courts to “cases” and “controversies.” U.S. Const., Art. III § 2. To bring a case or controversy before the Court, plaintiffs must have suffered an “injury in fact” that has a “causal connection” with the injury it complains of and that is likely to be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations and quotes omitted). An “injury in fact” for purposes of standing must rise to the level of an “invasion of a legally protected interest.” *See id.* The injury must also be “concrete and particularized” and “actual or imminent,” as opposed to “conjectural or hypothetical.” *See id.* Plaintiffs cannot meet these threshold requirements.

The challenged revenue procedure “imposes none of the obligations on [Montana] that, in other cases, have provided a state standing to challenge a federal statute:” it “does not directly burden [Montana];” “does not commandeer

[Montana's] enforcement officials;" and "does not threaten [Montana's] sovereign territory." *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 268 (4th Cir. 2011) (internal citations omitted). Nor does it create a conflict between federal law and Montana state law that in certain cases might lead to a state having standing to challenge federal action. *Id.* at 268-70 (finding that the conflict between the Affordable Care Act's individual mandate and Virginia state law did not give rise to a sufficient injury-in-fact for standing purposes).

Rather, plaintiffs' assertion of standing rests on little more than their desire to have the federal government collect certain donor information for them. Yet Montana *never* received this information prior to the issuance of Rev. Proc. 2018-38. Plaintiffs' alleged injury is therefore entirely "conjectural and hypothetical." *Lujan*, 504 U.S. at 560-61. And even if Montana has suddenly discovered a need for this information for purposes of this litigation, the State would have no legal right to the information even in the absence of Rev. Proc. 2018-38: applicable law does not obligate the IRS to supply Montana with requested donor information. Plaintiffs thus cannot establish any injury to a "legally protected interest." *Id.*

**1. Governor Bullock and the Montana Department of Revenue have not established that they have legal authority to assert the State of Montana’s alleged interests**

As an initial matter, the plaintiffs here—the Governor of Montana and the Montana Department of Revenue—allege only injuries to the State of Montana’s “quasi-sovereign interests.” Complaint ¶¶ 46-48. The State of Montana is not a plaintiff in this suit, and it does not appear that attorneys from the Montana Attorney General’s office are representing the plaintiffs. The plaintiffs have not established that they have the authority to sue in the name of the State of Montana, and it appears that Governor Bullock may lack such authority under Montana law. *See* Application for Writ of Prohibition, *McGrath v. Martz*, 2004 WL 2985143 (November 04, 2004) (“The Governor’s attempt to prosecute and defend any litigation on behalf of the State clearly exceeds the limitation set in the Constitutional Convention against her assumption of ‘direct responsibility of performing the duties assigned . . . the attorney general.’”) (internal citations omitted); see also *Bullock v. Fox*, OP 18-0599 (Montana) (considering questions of gubernatorial standing).

**2. Plaintiffs’ alleged injuries are hypothetical**

Plaintiffs have suffered no concrete or actual injury from Rev. Proc. 2018-38. First, Montana has never actually requested or received from the IRS the donor



information it claims to need. Tellingly, plaintiffs fail to allege that Montana has ever had a practice of receiving—or has even once received—such information from the IRS. Instead, the State merely hypothesizes that it someday “*may request* the names and addresses of significant contributors from the IRS.” Complaint ¶ 33 (emphasis added). In fact, Montana has not taken the preliminary steps necessary to receive such information. To receive donor information under § 6104(c)(3)—which governs the disclosure of donor information to states—state tax agencies must satisfy certain prerequisites, including entering into a disclosure agreement with the IRS. *See* I.R.M. § 7.28.2; Grimes Decl. ¶ 2. Montana does not have a § 6104(c) disclosure agreement with the IRS and has therefore not been receiving the information it now claims it needs. *Id.*, ¶ 3. For this reason alone, plaintiffs’ claims of harm are pure speculation about future actions it might take, which is exactly the kind of hypothetical situation a federal court is not constitutionally permitted to adjudicate. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (“we have repeatedly reiterated that ‘threatened injury must be *certainly impending* to constitute injury in fact,’ and that ‘[a]llegations of *possible* future injury’ are not sufficient) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) (emphasis added; internal quotation marks omitted))).

Second, even if Montana now decides that it desires this donor information, Rev. Proc. 2018-38 does not inhibit Montana from obtaining it. Montana could obtain that information directly from the exempt organizations themselves, as Rev. Proc. 2018-38 leaves in place the requirement that exempt organizations must maintain this information.<sup>9</sup> Nor does Rev. Proc. 2018-38 prevent Montana from independently mandating that exempt organizations retain and submit donor information. The fact that doing so might require the allocation of administrative resources or the enactment of new rules or regulations is not an injury-in-fact, as it would require the Court to accept the “extraordinary claim” that simply leaving Montana with the *discretion* to decide “whether to implement a federal statute,” or in this case, to replicate the effect of a prior federal regulation by exercising its own sovereign powers, is an injury-in-fact. *West Virginia ex rel. Morrissey v. HHS Dep’t*, 827 F.3d 81, 83-84 (D.C. Cir. 2016) (West Virginia lacked standing to challenge DHHS’s decision to not enforce the Affordable Care Act’s minimum coverage requirement during transition period, which left enforceability up to the states, because its injury was not sufficiently concrete and particular); *see also Massachusetts v. Mellon*, 262 U.S. 447, 482 (1923) (finding no “justiciable

<sup>9</sup> Indeed, it appears that, to the extent Montana has been receiving any donor information at all, it has been doing so by obtaining the information directly from the organizations. *See* Complaint ¶ 32.

controversy” where the statute did not “require the states to do or to yield anything”).

Plaintiffs do not plausibly assert that they would be harmed by the alleged weakening of the “overall rigor and reliability of the federal process” (Complaint, ¶ 35), nor that its own laws and regulations are not rigorous or reliable. Nor do they cite any legal principle that a state’s own failure to rigorously or reliably enforce its own laws could give rise to a claim of harm inflicted by the *federal* government. Likewise, Montana does not plausibly assert that it would face “substantial pressure” to change its laws, nor that such pressure could give rise to a claim of harm inflicted by the federal government. Complaint, ¶¶ 46-48. Montana’s “claimed injury, at bottom, involves a general desire to challenge the legality of a federal action, [but the] Supreme Court held long ago . . . that a State’s general challenge to the lawfulness of federal action, predicated on an abstract injury to the State’s sovereignty, is not sufficient to confer standing.” *West Virginia v. HHS Dep’t.*, 145 F. Supp. 3d 94, 102 (D.D.C. 2015), *aff’d* 827 F.3d 81 (D.C. Cir. 2016) (citing *Mellon*, 262 U.S. at 482).

### **3. Plaintiffs have no legally protected interest**

Even if plaintiffs could establish that they had a right under Montana law to assert sovereign injury based on their purely hypothetical desire to request donor

information from the IRS at some future time, they have no legal right to receive such information from the IRS. They therefore have no legally protected interest on which standing may be based.

As discussed, § 6104(c) governs the disclosure of donor information to states, but Montana does not meet the statutory prerequisites and therefore has no legally protected interest here.

Plaintiffs allege that Montana is authorized to obtain the donor information under § 6103(d) in conjunction with 26 C.F.R. § 1.6033-2, but this is incorrect. The more specific statute, § 6104(c), controls over the more general provisions of § 6103(d). *See, e.g., Gozlon-Peretz v. U.S.*, 498 U.S. 395, 407 (1991) (specific statutory provision normally controls over more general one). Moreover, the plain terms of § 6103(d) do not apply to exempt organization donor information, but only to return information “with respect to taxes imposed by” the specified chapters named therein. 26 U.S.C. § 6103(d)(1). Finally, even if plaintiffs could use § 6103(d) to obtain the donor information they seek, Montana’s current § 6103(d) disclosure agreements with the IRS do not provide for the disclosure of any Form 990 information, including the donor information at issue. Exs. 3 and 4 to the Grimes Decl.; Grimes Decl. ¶ 7.

Additionally, even if Montana were somehow to have a legally protected interest in obtaining return information through either § 6104 or § 6103, such an interest is not a statutory right to dictate to the IRS *what* information it must collect from exempt organizations on that form. Congress has explicitly granted the IRS the discretion, within certain parameters, to determine what information to collect on the form. Plaintiffs cannot possibly have the legal right to dictate to the IRS the “other information ... [the IRS] may by forms or regulations prescribe,” 26 U.S.C. § 6033(a)(1), or to prohibit the IRS from issuing a discretionary exception allowed by 26 U.S.C. § 6033(a)(3)(B). Congress granted that authority exclusively to the IRS.

Plaintiffs claim that they have suffered informational injury because information that was previously available to them by statute is no longer available. *See* Complaint, ¶ 45. But informational injury can give rise to standing only when access to that information is statutorily guaranteed. *Wilderness Society v. Rey*, 622 F.3d 1251, 1258–60 (9th Cir. 2010); *PETA v. United States Fish & Wildlife Serv.*, 2013 WL 12131726, at \*3 (C.D. Cal. June 26, 2013); *Boorstein v. Men’s Journal*, 2012 WL 2152815, at \*4 (C.D. Cal. June 14, 2012). While plaintiffs cite *FEC v. Akins*, 524 U.S. 11, 21 (1998), that case involved information that the applicable statute “required be made public.” *Wilderness Society*, 622 F.3d at 1258

(discussing *Akins*). Here, in contrast, there is no statutory guarantee that Montana can receive the names and addresses of donors to exempt organizations, and plaintiffs have therefore suffered no cognizable informational injury due to the IRS's issuance of Rev. Proc. 2018-38.

Without a legal right for Montana to the donor information at issue, the IRS has not invaded a legally protected interest by discontinuing the collection of this information on Schedule B of Form 990, and plaintiffs consequently lack standing. *See, e.g., Facebook v. IRS.*, 2018 WL 2215743, at \*12 (N.D. Cal. May 14, 2018) (“Because Facebook has no legally enforceable right to take its tax case to IRS Appeals, the IRS has not invaded a legally protected interest by refusing to refer Facebook’s case to IRS Appeals, and Facebook consequently lacks standing.”).

**B. Plaintiffs lack statutory standing because they do not come within the zone of interests of any statute that authorizes their suit**

In addition to their lack of Article III standing, plaintiffs also lack standing for the independent reason that they do not fall “within the class of plaintiffs whom Congress has authorized to sue.” *Lexmark v. Static Control Components*, 134 S.Ct. 1377, 1387 (2014). To determine this, the Court must ask whether the interests plaintiffs assert are “arguably within the zone of interests to be protected or regulated by the statute that [plaintiffs say] was violated.” *Match-E-Be-Nash-She-Wish Band v. Patchak*, 567 U.S. 209, 224 (2012) (internal quotations omitted).

This limitation on standing “is not toothless” in an APA suit, as plaintiffs must show that they fall within the “zone of interests” protected by the underlying substantive statute that is implicated by the challenged agency action. *Nw. Requirements Utilities v. F.E.R.C.*, 798 F.3d 796, 807-08 (9th Cir. 2015); *see also, e.g., Havasupai Tribe v. Provencio*, 906 F.3d 1155, 1166 (9th Cir. 2018). Plaintiffs cannot do so here. They are presumably claiming that 26 U.S.C. § 6033, or perhaps § 6103, are the substantive statutes implicated by the IRS’s action, as these are the only two non-APA statutes cited in the complaint, besides § 501 and the general jurisdictional statutes 28 U.S.C. §§ 1331 and 1391. But neither statute protects any state interest in the administration of federal tax law.

Section 6033 sets forth the return filing obligations of exempt organizations by prescribing certain requirements regarding the information they must report, while granting the IRS the discretion to make the majority of decisions regarding these requirements. Thus, the plain purpose of § 6033 is to enable the IRS to administer the tax code as it applies to exempt organizations. States like Montana are not within the class of intended beneficiaries of § 6033. Indeed, states are not mentioned, alluded to, or even contemplated by the provision.

As for § 6103, Rev. Proc. 2018-38 was not issued under § 6103, and it is difficult to see how plaintiffs could allege that § 6103 is the statute that protects

their interests, as it does not govern the disclosure of donor information, as discussed above. Moreover, the purpose of this statute is not to enable states to access return information, but to protect the privacy of taxpayers' return information by strictly limiting the circumstances under which the IRS may disclose it.

Because plaintiffs' "interests are so marginally related to or inconsistent with the purposes implicit" in §§ 6033 and 6103, "it cannot be reasonably assumed that Congress intended to permit" states to challenge decisions made by the IRS pursuant to these sections. *Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934, 940 (9th Cir. 2005) (internal quotation omitted); *Nw. Requirements*, 798 F.3d at 809.

**C. Congress has committed decisions about what information to collect from exempt organizations to the IRS's discretion**

The APA provides the framework for determining when a court may review an agency decision, but such review is precluded to the extent that "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). In other words, review is precluded "if the statute is drawn so that a court would have no meaningful standard against which to judge the agency's discretion." *Heckler v. Chaney*, 470 U.S. 821, 830 (1985). This is just such a case.

The tax code provides that all exempt organizations must file a return



“stating specifically the items of gross income, receipts, and disbursements, and *such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe.*” 26 U.S.C. § 6033(a)(1) (emphasis added). Pursuant to that broad grant of authority, the Secretary promulgated a regulation that requires exempt organizations to file the “additional information” of donor names and addresses. *See* 26 C.F.R. §§ 1.6033-2(a)(2)(ii)(f), 1.6033-2(a)(2)(iii)(d)(1). But in that same regulation, the Secretary delegated to the IRS Commissioner the discretion to “relieve any organization or class of organizations ... from filing, ... in part the annual return required by this section.” 26 C.F.R. § 1.6033-2(g)(6). This relief authority is entirely consistent with the statute, which (1) specifies that “such other information” can be prescribed by regulation *or forms*, and (2) expressly and solely grants the Secretary the authority to “relieve any organization ... from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws.” 26 U.S.C. § 6033(a)(3)(B). Rev. Proc. 2018-38 is an exercise of both grants of broad discretion, and it is separately authorized by each one: (i) it (along with its follow-on revised Form 990) prescribes by “form[]” which “other information” exempt organizations must provide, and (ii) it is an

exercise of the Secretary's broad discretion to "relieve any organization ... from filing such a return."

These two broad, statutory grants of power leave no meaningful standard that a court could apply in judging the IRS's exercise of discretion. "[F]or the purpose of carrying out the internal revenue laws," 26 U.S.C. § 6033(a)(1), and "not necessary to the efficient administration of the internal revenue laws," 26 U.S.C. § 6033(a)(3)(B), are so broad as to constitute no meaningful standards, and Congress gives no discrete, objective factors by which a court can judge either one. *See Webster v. Doe*, 486 U.S. 592, 600-01 (1988) (finding that Congress had committed employee termination decisions to agency discretion when Congress authorized termination whenever the Director "shall *deem* such termination necessary or advisable in the interests of the United States") (emphasis in original); *see also E.J. Friedman v. United States*, 6 F. 3d 1355, 1359 (9th Cir. 1993) (finding that statute, which provided that IRS may discharge property from liens if the IRS determines the United States' interest in the property has no value, committed the IRS decision to its discretion and thus was not subject to judicial review).

**D. Rev. Proc. 2018-38 is an interpretive and procedural rule for which notice-and-comment procedures are not required**

Notice-and-comment procedures are not required for “interpretive rules” or “rules of agency organization, procedure, or practice.” 5 U.S.C. § 553(b)(3)(A).

Rev. Proc. 2018-38 qualifies as an interpretive rule because it interprets and clarifies the “other information” that § 6033(a)(1) allows the IRS to require. It also qualifies as a procedural rule because it does not change the substantive criteria that organizations must meet to qualify for tax exemption.

“In general terms, interpretive rules merely explain, but do not add to, the substantive law that already exists in the form of a statute or legislative rule.

Legislative [or substantive] rules, on the other hand, create rights, impose obligations, or effect a change in existing law pursuant to authority delegated by Congress.” *Hemp Indus. Ass’n v. DEA*, 333 F.3d 1082, 1087 (9th Cir. 2003).

Rev. Proc. 2018-38 clarifies the “other information” that § 6033(a)(1) allows the IRS to require, but it makes no change to the existing law requiring the submission of “gross income, receipts and disbursements” or the law governing the qualifications an organization must maintain to be tax-exempt.

Rev. Proc. 2018-38 is similar to another revenue procedure that the D.C. Circuit recently determined to be interpretive and, thus, not subject to notice and comment. In that case, the applicable statute authorized the IRS to require return

preparers to demonstrate necessary qualifications and competency. *AICPA v. IRS*, 2018 WL 3893768, at \*8 (D.C. Cir. Aug. 14, 2018). The court found that a revenue procedure establishing education and testing requirements for certain preparers was an interpretive rule because it clarified how a preparer may demonstrate his qualifications and competency. *Id.* Similarly, Rev. Proc. 2018-38 is interpretive because it clarifies the “other information” that certain exempt organizations must provide to the IRS under IRC § 6033. By specifying the type of information – donor information – that certain organizations need not provide, Rev. Proc. 2018-38 interprets and clarifies § 6033’s requirement to submit “other information.”

Rev. Proc. 2018-38 also is not subject to notice and comment for the independent reason that it is a procedural rule. Procedural rules are “primarily directed toward improving the efficient and effective operations of an agency, not toward a determination of the rights [or] interests of affected parties,” and they “do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.” *Mendoza v. Perez*, 754 F.3d 1002, 1023 (D.C. Cir. 2014) (*quoting Batterton v. Marshall*, 648 F.2d 694, 702 n.34, 707 (D.C. Cir. 1980)).

Changing the information that certain exempt organizations must report (or not) on their returns does not alter the rights or interests of those organizations. Regardless of what information the organizations are required to report on their annual returns, the substantive law and standards that the organization must meet to remain tax-exempt are unchanged. For example, whether or not a § 501(c)(4) organization is required to report the names and addresses of its donors, the organization must nonetheless generally conduct its activities in support of social welfare and not for the private benefit of certain individuals, and not primarily for political campaign or other non-exempt purposes. Rather than altering any of the substantive limitations on the activities of tax-exempt organizations, Rev. Proc. 2018-38 merely addresses the IRS's timing and process for collecting information that may be used by the IRS to determine compliance with those unchanged substantive criteria. As Rev. Proc. 2018-38 explains, organizations "must continue to collect and keep [donor names and addresses] in their books and records and to make [that information] available to the IRS upon request." Although donor information no longer will be automatically collected for certain exempt organizations on Schedule B of their Forms 990, that information will remain available to the IRS in the event the IRS deems it necessary to obtain that information.

As a result of the above, Rev. Proc. 2018-38 is a procedural rule and thus not subject to notice and comment. *See JEM Broad. v. FCC*, 22 F.3d 320, 327 (D.C. Cir. 1994) (finding that FCC rules that required the dismissal of incomplete license applications without leave to amend were not subject to notice and comment because they “did not change the *substantive standards* by which the FCC evaluates license applications”) (emphasis in original). Plaintiffs’ claims to the contrary should be dismissed.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court should dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6).

DATED: February 20, 2019

Respectfully submitted,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

/s/ Joseph A. Sergi  
JOSEPH A. SERGI  
Senior Litigation Counsel  
LAURA M. CONNER  
LONDON M. YOST  
Trial Attorneys  
U.S. Department of Justice, Tax Division  
*Attorneys for the defendants*

**EXHIBIT INDEX**

- Exhibit 1 to the Grimes Decl.: Model Disclosure Agreement with the IRS regarding 26 U.S.C. § 6104(c)
- Exhibit 2 to the Grimes Decl.: Model Memorandum of Understanding with the IRS regarding the MEF Fed/State program for Form 990 information
- Exhibit 3 to the Grimes Decl.: Implementing Agreement between Montana Department of Revenue and IRS regarding 26 U.S.C. § 6103
- Exhibit 4 to the Grimes Decl.: Agreement of Tax Administration between Montana Department of Revenue and IRS regarding 26 U.S.C. § 6103

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief contains 5,605 words, excluding the caption, signature block, table of contents and authorities, exhibit index, and certificates of service and compliance. To make this certification, I have relied on the word count contained in the word-processing system used to prepare the brief.

s/ Landon M. Yost  
LANDON M. YOST  
Trial Attorney

**CERTIFICATE OF SERVICE**

I certify that on February 20, 2019, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to the following counsel for plaintiffs: Raphael Graybill.

s/ Landon M. Yost  
LANDON M. YOST  
Trial Attorney



RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

JOSEPH A. SERGI  
Senior Litigation Counsel

LAURA M. CONNER

LANDON M. YOST

Trial Attorneys

U.S. Department of Justice, Tax Division

555 4th Street, N.W.

Washington, D.C. 20001

(202) 305-0868 (Sergi); (202) 514-6438 (Conner); (202) 307-2144 (Yost)

(202) 307-2504 (fax)

joseph.a.sergi@usdoj.gov

laura.m.conner@usdoj.gov

landon.m.yost@usdoj.gov

Of Counsel:

KURT G. ALME

United States Attorney

VICTORIA FRANCIS

Assistant United States Attorney

*Attorneys for the defendants*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

STEPHEN C. BULLOCK, et al.,

Plaintiffs,

v.d

INTERNAL REVENUE SERVICE, et  
al.,

Defendants.

Case No. 4:18-cv-00103-BMM

**DECLARATION OF Phyllis Grimes**

I, Phyllis T. Grimes, pursuant to 28 U.S.C. § 1746, declare:

1. For the past 3 years, I have been employed as the Director, Governmental Liaison Disclosure and Safeguards at the Internal Revenue Service. In this role, I have responsibility for administering intergovernmental relations with federal and state agencies and establishing disclosure policy for the release of confidential tax returns and return information in accordance with the disclosure provisions of Title 26 U.S.C. § 6103.

2. The IRS may disclose Form 990 series tax returns or return information to state agencies pursuant to 26 U.S.C. § 6104(c), but the IRS only makes disclosures under this subsection to those state agencies that have entered into a Disclosure Agreement with the IRS regarding 26 U.S.C. § 6104(c). The Disclosure Agreement describes the responsibilities of the parties, the procedures for disclosure, and the information to be disclosed, and it constitutes the written request for disclosure required by 26 U.S.C. §§ 6104(c)(2) and (c)(3). A model Disclosure Agreement is attached to this declaration as Exhibit 1.

3. The Montana Department of Revenue does not have a Disclosure Agreement with the IRS regarding 26 U.S.C. § 6104(c), and therefore does not receive any Form 990 series returns or return information under this subsection.

4. The IRS may also make disclosure of Form 990 series tax returns or return information to state agencies pursuant to 26 U.S.C. § 6103(c) as part of a

joint federal and state program that provides that a taxpayer can consent to such disclosure by designating another person to receive its return. In order for a state agency to participate in this program it must execute a standard Memorandum of Understanding with the IRS. A model Memorandum of Understanding is attached as Exhibit 2.

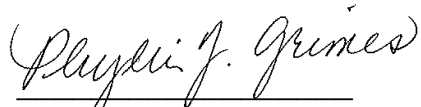
5. The Montana Department of Revenue has not executed a Memorandum of Understanding that would allow them to participate in the joint federal and state program under 26 U.S.C. § 6103(c) for information specific to exempt organizations, and therefore does not receive any Form 990 series returns or return information under this subsection.

6. Disclosure of certain tax returns and return information may be made to states or state agencies under 26 U.S.C. § 6103(d), pursuant to the disclosure agreements that the IRS executes with each state agency. The process and requirements for these agreements are set forth in various provisions of the Internal Revenue Manual and include a basic agreement and an implementing agreement. *See* IRM § 4.75.21.10.1 (available at [https://www.irs.gov/irm/part4/irm\\_04-075-021#idm139935172592496](https://www.irs.gov/irm/part4/irm_04-075-021#idm139935172592496)), IRM § 11.4.2.5 (available at [https://www.irs.gov/irm/part11/irm\\_11-004-002#idm140351757235104](https://www.irs.gov/irm/part11/irm_11-004-002#idm140351757235104)), IRM §§ 11.3.32 and 11.3.32-1 (available at [https://www.irs.gov/irm/part11/irm\\_11-003-032](https://www.irs.gov/irm/part11/irm_11-003-032)) (Sample Agreement on Coordination of Tax Administration).

7. The agreements that the IRS has executed with the Montana Department of Revenue regarding disclosure under 26 U.S.C. § 6103(d) are attached as Exhibits 3 and 4, as redacted. These agreements do not provide for the disclosure of Form 990 series returns or return information under 26 U.S.C. § 6103(d), and the Montana Department of Revenue therefore does not receive any Form 990 series returns or return information under this subsection.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 20th day of February, 2019.

A handwritten signature in cursive script, reading "Phyllis T. Grimes".

Phyllis T. Grimes  
Director, Governmental Liaison,  
Disclosure and Safeguards  
Internal Revenue Service

# **Sample Disclosure Agreement Under IRC Section 6104(c) for State Tax Officer**

## **Disclosure Agreement Under IRC Section 6104(c)**

### **SECTION 1. Introduction**

1.1 This Agreement outlines the terms and conditions under which returns and return information will be disclosed to the Tax Office of the State of [insert State name] pursuant to IRC section 6104(c). This Agreement constitutes the written request for inspection or disclosure required by paragraphs (c)(2) (C) and (c)(3) of IRC section 6104(c).

### **SECTION 2. Definitions**

For purposes of this Agreement, the following definitions apply:

2.1 Tax Office. The term "Tax Office" means the [insert Agency name].

2.2 Tax Officer. The term "Tax Officer" means the head of the [insert State name] Tax Agency.

2.3 IRS. The term "IRS" means the Internal Revenue Service, U.S. Department of Treasury.

2.4 State. The term "State" means [insert State name].

2.5 Return. The term "return" is defined in the same manner as provided in IRC section 6103(b)(1).

2.6 Return Information. The term "return information" is defined in the same manner as provided in IRC section 6103(b)(2). However, "return information" does not include information in the hands of the Tax Officer that is obtained wholly from sources independent of the IRS, even though identical to return information (including information that independently verifies return information).

2.7 Inspection. The term "Inspection" means any examination of a return or return information.

2.8 Disclosure. The term "disclosure" means the making known to any person in any manner whatever a return or return information.

2.9 Code. The terms "Code" and "IRC" mean the Internal Revenue Code of 1986, as amended.

2.10 Taxable person. The term taxable person means any person who is liable or potentially liable for excise taxes under IRC chapter 41 or 42. Such a person includes—

- a disqualified person described in IRC section 4946(a)(1), 4951(e)(4), or 4958(f);
- a foundation manager described in IRC section 4946(b);
- an organization manager described in IRC section 4955(f)(2) or 4958(f)(2);
- a person described in IRC section 4958(c)(3)(B);
- an entity manager described in IRC section 4965(d); and
- a fund manager described in IRC section 4966(d)(3).



### **SECTION 3. Disclosure of Returns and Federal Return Information Relating to IRC Section 501(c)(3) Organizations**

3.1 Pursuant to the laws of [insert State name], the Tax Officer is charged with the administration of state laws regulating organizations of the type described in IRC section 501(c)(3). Returns and return information (whether originals, paper copy, photocopy, microfilm, electronic transmission, magnetic media, or any other form) received from the IRS will be used for the purpose of, and only to the extent necessary in, the administration of such laws.

3.2 Pursuant to IRC section 6104(c), the Tax Officer requests, and the IRS will disclose, with respect to any organization that is described in IRC section 501(c)(3) and exempt from taxation under IRC section 501(a), or has applied under IRC section 508(a) for recognition as an organization described in IRC section 501(c)(3), the following items of return information:

1. A refusal or proposed refusal to recognize an organization's exemption as a charitable organization (a final or proposed denial letter);
2. Information regarding a grant of exemption following a proposed denial;
3. A revocation of exemption as a charitable organization (a final revocation letter), including a notice of termination or dissolution;
4. A proposed revocation of recognition of exemption as a charitable organization (a proposed revocation letter);
5. Information regarding the final disposition of a proposed revocation of recognition other than by final revocation;
6. A notice of deficiency or proposed notice of deficiency of tax imposed under IRC section 507 or IRC chapter 41 or 42 on the organization or a taxable person;
7. Information regarding the final disposition of a proposed notice of deficiency of tax imposed under IRC section 507 or IRC chapter 41 or 42 on the organization other than by issuance of a final notice of deficiency;
8. On a quarterly or other periodic basis, the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as organizations described in IRC section 501(c)(3). In addition, the IRS may make available to the Tax Officer the ability to verify, for any particular organization, whether such organization has applied for recognition as an IRC section 501(c)(3) organization; and
9. Information regarding the final disposition of an application for recognition of exemption where no proposed denial letter is issued, including whether the application was withdrawn or whether the applicant failed to establish its exemption.

3.3 Additional Disclosures Related to IRC section 501(c)(3) Organizations. The IRS may make available for inspection or disclosure returns and return information of an organization described in IRC section 501(c)(3), or that has applied for recognition under IRC section 508(a) as an organization described in IRC section 501(c)(3), if the IRS determines that such returns or return information may constitute evidence of noncompliance under the laws within the jurisdiction of the Tax Officer regulating charitable organizations and applicants.

3.4 Except for returns and return information relating to proposed notices of deficiency with respect to taxable persons, additional returns and return information of organizations or taxable persons with respect to which information is or may be disclosed under Section 3.2 may be disclosed to or made available for inspection by the Tax Officer or his/her designee (see Section 5.1).

3.5 The IRS will disclose or make available for inspection to the Tax Officer under this Agreement such information only with respect to—

1. an organization formed under the laws of [insert State name];
2. an organization, the principal office of which is located in [insert State name];
3. an organization that, as determined by the IRS, is or might be subject to the laws of [insert State name] regulating charitable organizations or the solicitation or administration of charitable funds or charitable assets; or
4. a private foundation required by Treas. Reg. §1.6033-2(a)(iv) to list [insert State name] on any of the foundation's returns filed for its last five years.

#### **SECTION 4. Disclosure of Returns and Return Information Relating to Organizations other than IRC Section 501(c)(1) and IRC Section 501(c)(3) Organizations**

4.1 The IRS may make available for inspection or disclosure returns and return information of any organization described in IRC section 501(c) (other than organizations described in paragraph (1) or (3) thereof) for the purpose of, and only to the extent necessary in, the administration of [insert State name] laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. The Tax Officer will use returns and return information so disclosed only for such purposes. **[insert only if the Tax Office does this]** Organizations whose information will be disclosed under this section will be limited to those organizations described in subsections 3.5(1)-(3).

## **SECTION 5. Designees of Tax Officer Permitted to Receive Returns and Return Information**

5.1 The Tax Officer designates the individuals listed in Appendix A to receive returns and return information on the Tax Officer's behalf and to request additional returns and return information that have not already been disclosed pursuant to Section 3.2, 3.4, or 4.1. The Tax Officer will notify the IRS in writing of any additions, deletions, or other changes to the list of designated persons.

## **SECTION 6. Use and Redisclosure of Returns and Return Information Disclosed to the Tax Officer under this Agreement**

6.1 The Tax Officer or any designee to whom a return or return information has been disclosed may thereafter disclose such return or return information:

1. to another employee of [insert State name] for the purpose of and only to the extent necessary in the administration of the laws described above and
2. to another employee of [insert State name], personally and directly engaged in, and for use in, preparation for a civil proceeding before a State administrative body or court in a matter involving administration of the [insert State name] laws described above, if the returns and return information satisfy the criteria established in IRC section 6104(c)(4) or any regulations promulgated pursuant to IRC section 6104(c)(4). Such information may also be disclosed in such civil administrative or judicial proceeding, but only if such information satisfies the criteria in such provisions or regulations, as applicable.

Returns and return information received under IRC 6104(c) and this Agreement may not be redisclosed to agents or contractors.

6.2 If there are questions about whether an administrative or judicial proceeding has been initiated, the Tax Officer or the persons listed in Section 5.1 will contact the TEGE Liaison. The TEGE Liaison will determine whether a proceeding has been initiated. If no proceeding has yet been initiated, the Tax Officer may request written permission to disclose to a taxpayer their own returns or return information under IRC section 6103(e) and Treas. Reg. § 301.6103(p)(2)(B)-1.

6.3 Notwithstanding any other provision of this Agreement, the IRS will not disclose a return or return information under this Agreement if such disclosure would seriously impair Federal tax administration. The Tax Officer further agrees that prior to the disclosure of any return or return information in a State administrative or judicial proceeding or to any party as provided by subsection 6.1(b) of this Agreement, the Tax Officer or his/her designee will notify in writing the TEGE Liaison from whom the return or return information was received, of the intention to make such disclosure. No officer or employee will disclose a return or return information in such State judicial or administrative proceeding if the TEGE Liaison or other official designated by the Director, Exempt Organizations, within 30 calendar days following receipt of such written notice, informs the Tax Officer that such disclosure would seriously impair Federal tax administration.

## **SECTION 7. Safeguards and Other Requirements**

7.1 The Tax Officer's office will maintain all federal tax returns and return information (FTI) sourced from the IRS in accordance with this Agreement and IRC section 6103(p)(4) and comply with the safeguards requirements set forth in Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*, which is the IRS published guidance for security guidelines and other safeguards for protecting returns and return information pursuant to Treas. Reg. § 301.6103(p)(4)-1. IRS safeguarding requirements require:

1. The Tax Officer's office will establish a central point of control for all requests for and receipt of FTI, and maintain a log to account for all subsequent disseminations and products made with/from that information, and movement of the information until destroyed, in accordance with Publication 1075, section 3.0.



2. The Tax Officer's office will establish procedures for secure storage of FTI consistently maintaining two barriers of protection to prevent unauthorized access to the information, including when in transit, in accordance with Publication 1075, section 4.0.
3. The Tax Officer's office will consistently label FTI obtained under this Agreement to make it clearly identifiable and to restrict access by unauthorized individuals. Any duplication or transcription of FTI creates new records which must also be properly accounted for and safeguarded. Federal tax returns and return information should not be commingled with other Agency records unless the entire file is safeguarded in the same manner as required for FTI and the FTI within is clearly labeled in accordance with Publication 1075, section 5.0.
4. The Tax Officer's office will restrict access to FTI solely to officers and employees of the office whose duties require access for the purposes of carrying out this Agreement. Prior to access, the Tax Officer's office must evaluate which employees require such access. Authorized individuals may only access FTI to the extent necessary to perform services related to this Agreement, in accordance with Publication 1075, section 5.0.
5. Prior to initial access to FTI, and annually thereafter, the Tax Officer's office will ensure that employees and officers who will have access to FTI receive awareness training regarding the confidentiality restrictions applicable to the FTI and certify acknowledgement, in writing, that they are informed of the criminal penalties and civil liability provided by IRC sections 7213, 7213A, and 7431 for any willful disclosure or inspection of FTI that is not authorized by the IRC, in accordance with Publication 1075, section 6.0.
6. The Tax Officer's office will submit an annual Safeguard Security Report (SSR) to the Office of Safeguards by the submission deadline specified in Publication 1075, section 7.0, to provide an update on safeguarding activities during the reporting period and provide Tax Officer certification that the SSR addresses all Outstanding Actions identified by the Office of Safeguards from the Tax Officer's office's prior year's SSR; that it accurately and completely reflects the Tax Officer's office's current environment for the receipt, storage, processing and transmission of FTI; that it accurately reflects the security controls in place to protect the FTI in accordance with Publication 1075; of the Tax Officer's office's commitment to assist the Office of Safeguards in the joint effort of protecting the confidentiality of FTI; report all data incidents involving FTI to the Office of Safeguards and the Treasury Inspector General for Tax Administration (TIGTA) timely and that the Tax Officer's office will cooperate with TIGTA and Office of Safeguards investigators, providing data and access, as needed, to determine the facts and circumstances of the incident; support the Office of Safeguards on-site review to assess Tax Officer's office compliance with Publication 1075 requirements, by means of manual and automated compliance and vulnerability assessment testing, including coordination with information technology (IT) divisions to secure pre-approval, if needed, for automated system scanning and to support timely mitigation of identified risk to FTI in Tax Officer's office's Corrective Action Plan (CAP) for as long as the Tax Officer's office maintains FTI. Required reports will be transmitted in electronic format and on the template provided by Office of Safeguards, using an IRS-approved encryption method in accordance with Publication 1075, section 7.0.
7. The Tax Officer's office will ensure that FTI is properly destroyed or returned to the IRS when no longer needed, based on established Agency record retention schedules, in accordance with Publication 1075, section 8.0.
8. The Tax Officer's office will conduct periodic internal inspections of facilities where FTI is maintained to ensure IRS safeguarding requirements are met and will permit the IRS access to such facilities, as needed, to review the extent to which the Tax Officer's office is complying with the IRC section 6103(p)(4) requirements of this section.

7.2 Generally, this Agreement covers secure electronic transmission of FTI to the Tax Officer's office, provided the Agency's computer systems are compliant with Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act of 2002 (FISMA) or National Institute of Standards and Technology (NIST) Special Publication 800-53 standards and guidance for security of data at the moderate impact level. The office's SSR must fully describe the computer system and security controls implemented for the receipt, processing, storage, and transmission of electronic FTI.



Required security controls for systems that receive, process, store and transmit electronic FTI are specified in Publication 1075, section 9.0.

Any receipts of FTI in paper format must also be fully disclosed in the Tax Officer's office's SSR. Required security controls associated with the receipt, processing and storage of any FTI received in paper format are specified in previously mentioned sections of Publication 1075.

7.3 The Tax Officer's office agrees to report suspected unauthorized inspection or disclosure of FTI within 24 hours of discovery to the appropriate Agent-in-Charge, TIGTA, and to the IRS Office of Safeguards, as specified in Publication 1075, section 10.0.

7.4 Tax Officer's office officers and employees may have access to FTI obtained under this Agreement.

7.5 Tax Officer's office officers and employees who inspect or disclose FTI obtained pursuant to this Agreement in a manner or for a purpose not so authorized by the IRC are subject to the criminal sanction provisions of IRC sections 7213 and 7213A and 18 U.S.C. section 1030(a)(2), as may be applicable. In addition, the Tax Officer's office could be required to defend a civil damages action under IRC section 7431.

7.6 IRS will conduct periodic safeguard reviews of the Tax Officer's office to assess whether security and confidentiality of FTI is maintained consistent with the safeguarding protocols described in Publication 1075, the Tax Officer's office's SSR, and in accordance with the terms of this Agreement. Periodic safeguard reviews will involve the inspection of Tax Officer's office facilities where FTI is maintained; the testing of technical controls for computer systems storing, processing or transmitting FTI; review of Tax Officer's office recordkeeping and policies and interviews of Tax Officer's office employees and contractor employees, as needed, to verify the use of FTI and assess the adequacy of procedures established to protect FTI.

7.7 The Tax Officer's office recognizes and treats all Safeguards documents and related communications as IRS official agency records; that they are property of the IRS; that IRS records are subject to disclosure restrictions under federal law and IRS rules and regulations and may not be released publicly under state Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. If the Agency determines that it is appropriate to share Safeguard documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of FTI that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguard documents and related communications are property of the IRS; that they constitute IRS official agency records; that any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal FOIA statute.

The TEGE Liaison will ensure that all requirements for recordkeeping and accounting for disclosures are met in accordance with IRC section 6103(p)(3) and its implementing regulations.

7.8 As noted in Section 6.3, the Tax Officer's office will not disclose any information it receives from IRS if such disclosure would seriously impair Federal tax administration (including waiving privileges or identifying a confidential informant without IRS approval.)

## **SECTION 8. Transmittal Procedures**

8.1 All information exchanged will include a Document Transmittal (Form 3210 or equivalent) or other means of verifying receipt with a count of documents by type and a brief description of the information being provided.

8.2 The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a Federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

#### **SECTION 9. Limitations**

9.1 The terms of this Agreement are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this Agreement which conflicts with federal law will be null and void.

#### **SECTION 10. Officials to Contact for Obtaining Information**

10.1 Additional requests for information related to matters disclosed pursuant to Section 3 will be made to the TEGE Official who made the initial disclosure. Additional requests for information related to matters disclosed pursuant to Section 4 are to be made to the TEGE Liaison.

#### **SECTION 11. Termination or Modification of Agreement**

11.1 This Agreement may be cancelled upon [agreed-upon number] days written notice by either the IRS or the Tax Officer's office or immediately by signed Agreement of the IRS and the Tax Officer.

11.2 This Agreement may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by all parties to the Agreement.

#### **SECTION 12. Evaluation Of Data Exchange:**

12.1 The IRS and the Tax Officer's office will review this Agreement annually to evaluate the existing data exchange, examine the continuing needs for and uses of the exchanged data, and determine whether the provisions of this Agreement require amendment or revision. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison, Office of Safeguards, Business Operating Division, and the Tax Officer's office.

#### **APPROVED:**

**[INSERT NAME OF STATE]**

\_\_\_\_\_ (signature)

Head of Agency

Signed at: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### **INTERNAL REVENUE SERVICE**

\_\_\_\_\_ (signature)

Commissioner, Tax Exempt and Government Entities

Signed at: Washington, DC, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### **APPENDIX A**

**DESIGNEES (INCLUDE NAME, ADDRESS, JOB TITLE, and NAME AND ADDRESS OF OFFICE)**

**MEMORANDUM OF UNDERSTANDING FOR THE**  
**EXEMPT ORGANIZATION FEDERAL/STATE ELECTRONIC FILING**  
**PROGRAM**

**BETWEEN**

**STATE/COMMONWEALTH OF \_\_\_\_\_ CHARITIES BUREAU**

**AND**

**INTERNAL REVENUE SERVICE**



## **ARTICLE I – PURPOSE OF DOCUMENT**

The purpose of this Memorandum of Understanding (MOU) is to define the general administrative, procedural and technical framework which permits the Internal Revenue Service (hereafter, referred to as the IRS) and the State/Commonwealth charities bureau (hereafter, referred to as the State) to participate in the Exempt Organization Federal/State Electronic Filing Program (hereafter, referred to as EO Fed/State Program). In terms of the MOU, the IRS Headquarters address is IRS, EO Fed/State Program, SE:T:BSP, 679-08, 1111 Constitution Ave., NW, Washington, DC, 20224. In terms of the MOU, a “State” is defined as any of the fifty states, and the District of Columbia, with which the Commissioner of the Internal Revenue Service has entered into an agreement regarding disclosure regarding exempt organization returns.

## **ARTICLE II – AUTHORITY**

This MOU is entered into between the IRS and the State pursuant to the authority vested in the Commissioner of the IRS to enforce and administer the internal revenue laws. This authority includes the disclosure of Federal returns and return information in accordance with Internal Revenue Code Section 6103(c).

## **ARTICLE III – CONCEPT OF OPERATIONS**

The general concept is to leverage current operations on the IRS Modernized e-File (MeF) platform used for the electronic filing of exempt organization information returns and to modify these operations to the extent necessary to accommodate the transmission of state exempt organization returns (hereafter, referred to as state returns) and, at the request of the filer, copies of the federal Forms 990/990-EZ/990-PF (hereafter referred to as EO copies), through the IRS to the State and status information from the State to the IRS. It is the intent of the IRS to function primarily as a data conduit between the transmitter and the State.

In the EO Fed/State Program, the term “data conduit” is used to define the following:

- A process to receive, temporarily store, and then make available for state retrieval and processing the state return(s) associated with a federal return that has been accepted by the IRS, EO copies, or the stand alone state returns that have been transmitted through the IRS system.
- A process to receive, temporarily store, and then make available to the transmitter, status information for state returns and EO copies.

The key software design strategy is to separate and encapsulate the federal and attached state return data in logically distinct return submissions (federal submission and state submission). The federal submission contains only that data pertaining to the federal exempt organization information return, plus the filer’s request to send a copy of the EO

return to one or more states. The associated state submission contains all the information needed for filing the state return, except for the copy of the federal EO return. If the state return is associated with a federal return, there will be a pointer from the state submission to the associated federal submission.

The state submission consists of a manifest and payload. The purpose of the manifest is to provide identifying information about the state submission and provide information that IRS needs to perform limited validation. The payload includes the state XML data as defined by the State, and binary attachments, if applicable.

The following requirements must be followed:

- The federal return data must be submitted in XML format as specified by IRS,
- The state return data should be submitted in XML format or as specified by State agencies.
- The return data in a submission must be in Zip Archive format as specified by IRS and States.
- The federal returns accepted through the EO Fed/State Program must have whole dollar amounts only (no cents).

For specifics, see Exhibit A, Concept of Operations.

#### **ARTICLE IV – IRS MAJOR ROLES AND RESPONSIBILITIES**

1. IRS agrees to provide the following publications which contain EO Fed/State instructions and specifications. These publications will not contain state specific documentation.

- Publication 3112, IRS *e-file* Application and Participation
- Publication 5078, Modernized e-File (MeF) Test Package (Business Submissions)
- Publication 4163, Modernized e-File (MeF) Information for Authorized IRS *e-file* Providers)
- Publication 4164, Modernized e-File Guide for Software Developers and Transmitters

2. IRS will provide notices, information, and updates to States on the EO Fed/State Program through a list serve and/or e-mail. Updates to IRS publications mentioned above will be available to States and electronic filers through the [irs.gov](http://irs.gov) website.

3. IRS will designate specific contact points for participating States at IRS Headquarters and at the Ogden IRS Campus.

4. IRS will indicate receipt of the state submission by sending a receipt notification to the transmitter. This is not an acknowledgement of acceptance or rejection of the state return, only an indication that a state submission was received by the IRS. For the copies of the Forms 990/990-EZ/990-PF sent to the States, the acknowledgement of the accepted federal filing will be the receipt received by the transmitter that the copy or copies have been sent.

5. The IRS will perform certain validations before the state submissions are made available to the State.

**Fed/State (Federal submission and State submission(s) with pointer to Federal):**

**If federal submission is rejected**

**For each state submission**

- State submission will also be rejected and will not be sent on to the State
- An acknowledgement will be sent to the transmitter

**If federal return is accepted**

**For each state submission, IRS will check:**

- That the State can be identified in the manifest record
- That the State indicated in the state submission is a State that is participating in the EO Fed/State Program.
- If State can't be identified or if State is not participating,
  - the return is rejected by the IRS
  - an acknowledgement will be sent to the transmitter which can be used by the transmitter to notify the preparer that the form will not be submitted to the State.
- If the State is participating,
  - MeF checks the Federal Employer's Identification Number (FEIN) and the name control against the IRS FEIN and name control database. This check will be used to determine if the FEIN and name control are valid on the IRS database
  - MeF associates the results of the check with state submission
  - MeF stages state submission for retrieval
  - MeF provides status "Ready for Pick Up"

**State Stand-Alone (State submission with no pointer to a Federal submission)**

**IRS will check that:**

- The State can be identified in the record
- The State indicated in the state submission is a State that is participating in the EO Fed/State Program
- The State authorizes stand-alone state submissions
- If the State cannot be identified or if State is not participating,
  - the return is rejected by the IRS, and
  - an acknowledgement will be sent to the transmitter
- If the State is participating and authorizes stand-alone state submissions,
  - MeF checks FEIN and the name control against IRS FEIN and name control database
  - MeF associates the results of the check with the state submission
  - MeF stages state submission for retrieval
  - MeF provides status “Ready for Pick Up”

7. When a filer indicates that a copy or copies of the EO form should be forwarded to one or more states, EO Fed/State will check that each State indicated in the request is a State participating in the EO Fed/State Program. If each State is not a participating State, the federal return will be rejected. If each State is a participating State, a copy of the return (redacted as necessary depending on each state agreement, see Article VII), will be forwarded to the State. If the federal return is rejected for any reason, a copy(s) of the federal form will not be forwarded to the State(s).

8. EO Fed/State will only be available using web services (application-to-application) communications between MeF and State systems.

9. IRS will store the state return on-line in the MeF staging area for retrieval by the State for a maximum of fourteen (14) calendar days after acknowledgement of acceptance of the federal data or the receipt of the state stand-alone return. Fourteen days from the date of receipt of the state return, IRS will move the state return to off-line storage and retain the state return for one year. IRS will make available to the requestor within 24 hours of the request state returns stored off-line. IRS will store State acknowledgements on-line for one year. The IRS retains the right to set the number of days the data will be stored in the staging area. The IRS functions as a conduit for the state electronic returns and State acknowledgements and will not retain a permanent record of these files. IRS will immediately notify the States when any change takes place in the length of time for data storage.

10. IRS will make available electronic reports of state returns received, rejected and accepted in each file.

11. The IRS disaster recovery plan for MeF stipulates that if MeF is not available, EO Fed/State filing will be temporarily discontinued until program changes can be made at the backup site to allow for EO Fed/State filing. IRS will notify the State of a MeF shutdown and of the resumption of the EO Fed/State Program at a backup site. The IRS will support electronic transmission of federal and state submissions to the backup site and state retrieval from the backup site.

12. The IRS will notify the State of any prolonged MeF downtime of more than four hours (both scheduled and unscheduled) and will provide the anticipated timeframe for the system to be back up.

13. IRS will acknowledge disposition of the federal return submission from a transmitter within 24 hours of the originating submission. Once federal acknowledgement is made to the transmitter, the state submission associated with an accepted federal submission is staged for the State to retrieve. In addition, if the federal return is accepted and the filer has indicated that a copy should go to a State(s), the copy or copies will be staged for the State to retrieve.

14. The IRS will accept state submissions from any filer who is accepted as an Authorized IRS *e-file* Provider.

15. The IRS will maintain the confidentiality of the state return filing.

16. The IRS e-Help Desk will provide information on the status of a state return (Ready for Pick Up, Sent to State, Acknowledgement Received from State) but will not provide information on the acceptance or rejection of state returns to transmitters and/or preparers. The IRS e-Help Desk will also supply status information to States as necessary.

17. The IRS will provide technical assistance to States and/or their designees for problems with Web Services transmissions through the Ogden e-Help Desk at the following toll-free telephone number 1-866-255-0654.

## **ARTICLE V – PARTICIPATING STATE ROLES AND RESPONSIBILITIES**

1. The State will adhere to the requirements listed for all electronic filers in the IRS Revenue Procedure and will follow the procedures contained in Publication 3112 and the specifications contained in Publication 4164.

2. The State will provide final copies of their EO Fed/State Program external procedures and requirement documents (such as forms, specifications and instructions to software developers, filers, etc.) to the IRS Headquarters, EO Fed/State Team.



3. The State will provide the IRS with updates about the State electronic filing program as requested, an end-of-season report, and other requested information. The State will respond to all requests from the IRS in a timely manner.
4. The State will provide specifications and instructions to electronic filers (electronic return originators, transmitters and software developers) for the preparation and transmittal of the state submission. The State will keep abreast of IRS changes in the EO Modernized e-File Program via the IRS website (irs.gov).
5. The State will provide a point of contact to the MeF EO Project Team.
6. The State is required to officially notify IRS that it can successfully retrieve and process data from the IRS (completed testing) and that it is ready for production (live processing). A written notice or a phone call should be provided to the IRS EO Fed/State e-file Coordinator the day before startup each year.
7. The State will notify the IRS of the date that their program will be operational.
8. The State is responsible for the Assurance Testing of the State requirements on the state data. The State is responsible for determining and implementing the State test procedures to be followed on state returns.
9. The State will develop the capability to electronically retrieve all state submissions from the IRS. The State must use compatible computer hardware, software and communications capabilities.
10. The State will retrieve the state return filing from the IRS within 48 hours of IRS acknowledgement during the peak filing season. This requirement may be relaxed by IRS so that States with small volumes do not have to provide retrieval services during the weekend. Depending on volumes during non-peak periods, the IRS retains the right to require retrieval within 48 hours.
11. If the State processing system is down for more than 5 days, the State will contact the IRS regarding those problems.
12. The State will retrieve all state submissions available from the IRS.
13. The State is responsible for maintaining data integrity once the State receives a completed data transmission. The State is responsible for resolving any subsequent errors of any type detected during state processing.
14. The State is responsible for creating periodic back-up files.
15. The State will accept that IRS has a valid signature available for all copies of federal returns for three years after receipt of the federal return. If a State needs a specific signature document, they will request the signature document (Form 8453-EO or

Form 8879-EO) from the IRS on an ad hoc basis. (Note that per IRS instructions, Form 8879-EO is maintained by the Electronic Return Originator (ERO) for three years and must be provided to the IRS upon request; Form 8453-EO is stored with the federal return as a binary file.).

## **ARTICLE VI – DATA VALIDATION**

The data validation method for a federal submission is defined in Publication 4164, Modernized e-File Guide for Software Developers and Transmitters. The State shall define the data validation for a state submission in their publications.

## **ARTICLE VII – DISCLOSURE OF TAX RETURN INFORMATION**

Federal and state returns are sent to the IRS as complete and separate submissions. No data will be transferred or copied from one submission to another. The IRS generated information that will be associated with the zip file of data for state submissions will include:

- ETIN—The identifier of the transmitter that sent this submission to IRS.
- Received Timestamp—The date and time the submission was received by the IRS.
- Electronic Postmark—The date and time the submission was received by the Transmitter.
- FEIN Status—The results of FEIN and name control lookup.

Copies of accepted Forms 990/990-EZ/990-PF are being forwarded to States via a request from the filer that is attached to the electronically filed federal form. Because this form contains a PIN, it is redacted from the copy or copies sent to the State. The request form consists of the following elements:

- Name of the person submitting the consent for a copy or copies
- Title of the person submitting the consent
- Personal Identification Number (PIN) which has the person's signature acknowledging the PIN on Form 8453-EO or 8879-EO
- Date
- State(s) to which a copy of the federal return is to be sent

Pursuant to State laws and/or regulations, \_\_\_\_\_ (Name of State) will/will not (select one) receive Schedule B (Form 990, 990-EZ, or 990-PF), Schedule of Contributors. IRS will automatically redact Schedule B pursuant to each specific State agreement.

State return submissions are only made available to the State identified in the "Government Code" data field within the submission manifest. There is no provision for

participating States to request or receive tax return data from other States using the capabilities of the electronic filing system.

If a participating State varies from the specified procedures; for example, using a third party or agent to retrieve the state return filing from the IRS, review and approval must be obtained from the IRS Headquarters Office. The third party must meet the disclosure requirements cited above.

## **ARTICLE VIII – SECURITY AND PRIVACY**

The Internal Revenue Service (IRS) and State shall carry out their respective responsibilities for ensuring information systems security and taxpayer privacy commensurate with the sensitivity of the information under their control. Revenue Procedure 2005-60, or any subsequent revision, is the legally binding document that contains the rules governing regulation of IRS *e-file* Providers. Providers must comply with the provisions of the revenue procedure and all publications and notices governing IRS *e-file* referenced by this procedure including Publication 4164, Modernized e-File Guide for Software Developers and Transmitters. Publication 4164 provides policies and guidance to be followed by IRS *e-file* Providers to carry out their responsibilities in information systems security and privacy.

Registered users must provide true, accurate, current, and complete information. IRS sensitive information used to access the Registered User Portal (RUP) including passwords, usernames, PINs and other such credentials used to manage the identity of registered users and systems for authentication purposes, must be protected and comply with the requirements set forth and agreed to by responsible parties as part of the IRS registration process. (Refer to Password Management section of Publication 4164 for more information.)

Users shall immediately notify the IRS of any suspected unauthorized use of passwords or accounts, or any other breach of security by calling 1-866-255-0654 (international callers will dial 512-416-7750). In the event of RUP Login failure, registered users should immediately notify the IRS at the numbers mentioned.

It is agreed that the Registered User Portal (RUP) is an Official United States Government System, to be used only for authorized purposes. The Government may monitor and audit the usage of this system, and all persons are hereby notified that the use of this system constitutes consent to such monitoring and auditing. Unauthorized attempts to upload information and/or change information on these web sites, and any attempts to defraud the government are strictly prohibited and subject to prosecution under the Computer Fraud and Abuse Act of 1986 and Title 18 U.S.C. Sec. 1001 and 1030.

## **ARTICLE IX – PREVENTION OF FRAUD**

The State will implement effective external filing requirements and internal procedures to detect and prevent the processing of fraudulent or erroneous state returns. In conjunction with the prevention of fraud, it is the responsibility of the State agency to detect duplicate or erroneous state returns and to develop audit procedures to combat and control that situation.

The IRS and the State will explore opportunities for coordinated detection of schemes to file fraudulent returns, in both electronic and paper formats.

## **ARTICLE X – SOFTWARE REQUIREMENTS AND ACCEPTANCE OF TAX PREPARATION SOFTWARE**

IRS Publications 4163 and 4164 contain the procedures and specifications for EO Fed/State Electronic Filing.

The state exempt organization information required by a State must be contained within the State publications. The State agency will determine and communicate to the software developers whether they should allow filers to request copies of federal forms to be sent to the State, and what additional state-only forms should be filed.

The acceptance of tax preparation software is a shared responsibility. The IRS is responsible for determining whether a federal tax return can be processed. The IRS is responsible for validating whether the XML format is compatible with the IRS schemas for federal returns and for the state wrapper, not contents of the state envelope. Determination of the test procedures to perform the IRS software assurance testing is the sole responsibility of the IRS for federal returns. These test procedures are specified in Publication 5078.

The State will follow the testing and acceptance process described in Publication 5078. The State is responsible for determining and implementing the appropriate test procedures to be followed on state returns, once these are accepted as meeting the IRS format requirements. States will understand that IRS software developer testing does not replace the need for State software developer testing. The IRS is responsible for receiving the test transmission, validating the federal data and state wrapper data received, generating the IRS data for submissions that passed validations, and making the state submission available to the State for further testing.

## **ARTICLE XI – REJECTION/SUSPENSION OF AN ELECTRONIC FILER**

If an electronic filer is suspended or rejected from the electronic filing program, the IRS cannot accept federal or state tax data from that filer unless the filer is reinstated through the administrative review process.

Information about the IRS monitoring, suspension, and administrative review process is contained in Publication 3112 and Internal Revenue Manuals. Causes for warning letters, suspensions, or rejections of electronic filers are contained in Publication 3112.

IRS will not suspend electronic filers for State infractions. The State may provide information about electronic filers to the EO Fed/State Team, if desired. The State may suspend a State electronic filer, but the IRS cannot prevent that filer from sending state returns through the IRS Modernized e-File System.

## **ARTICLE XII – WITHDRAWAL AND SUSPENSION OF A PARTICIPATING STATE**

A State may withdraw from the EO Fed/State Program by submitting a written notice to the IRS Headquarters, EO Fed/State Team. IRS may suspend a State from the EO Fed/State Program due to failure to meet the terms and conditions of this MOU. The recommendation for suspension would be made by the Commissioner, Tax Exempt/Government Entities for review and implementation.

## **ARTICLE XIII – COSTS**

All hardware and software development costs incurred by a State are the responsibility of the State. All communications costs associated with transmitting a state return filing to the IRS are the responsibility of the transmitter. All costs associated with the retrieval of state tax information from the IRS by the State are the responsibility of the State.

The IRS is responsible for all internal costs associated with the EO Fed/State Program, including computer hardware and software. The IRS is responsible for providing capacity to allow timely submission of state returns and access to state returns by the State.

#### **ARTICLE XIV – LIABILITY**

Each party to this agreement shall be liable for the acts and the omissions of its own employees.

The IRS shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under the Federal Tort Claims Act (28 U.S.C. 1346(b)), or pursuant to other Federal statutory authority. Similarly, the State shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under applicable state or local law.

#### **ARTICLE XV – THIRD PARTY RIGHTS**

This MOU does not confer any rights or benefits on any third party.

#### **ARTICLE XVI – PERIOD OF UNDERSTANDING**

This MOU is effective until it is officially terminated upon mutual written agreement.

#### **ARTICLE XVII – EFFECTIVE DATE**

This MOU will become effective on the date of the last signature written below, and will remain in effect until officially terminated.

#### **ARTICLE XVIII – AMENDMENT OR TERMINATION OF MOU**

This MOU may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by all parties to the agreement. This MOU may be terminated by either party after ten (10) days notification. Notification will be by letter specifying the reason for the termination.

## ARTICLE XIX - SIGNATURES

It is agreed by the signatories to this agreement that the IRS and the State will participate in the EO Fed/State Program under the terms and conditions listed in this document.

### For the State:

_____	_____
Date	(Signature)
Name	_____
	(Printed)
Title	_____

### For the Internal Revenue Service:

_____	_____
Date	(Signature)
Name	_____
	(Printed)
Title	<u>Director, Business Systems Planning, Tax Exempt/Government</u>
<u>Entities</u>	

**Implementing Agreement**  
**for the**  
**Agreement on Coordination**  
**of Tax Administration**  
**between**  
**the Montana Department of Revenue**  
**and**  
**the Internal Revenue Service**



Portions of this document are for Official Use Only (OUO)  
OUO sections are designated by #



**Table of Contents**

Section	Title	Page
I.	Purpose and Definitions	3
II.	IRS and Agency Liaison Officials	3
III.	Information to be Exchanged on a Continuing Basis	4
IV.	Requests for Information not Exchanged on a Continuing Basis	4
V.	Disclosures Concerning Agency Employees for Conduct Investigations	5
VI.	IRS Initiated Conduct Related Disclosure	5
VII.	Administering the Federal/State Electronic Filing Program	6
VIII.	Disclosure, Safeguards, and Record Keeping Requirements	6
IX.	Transmittal Procedures	7
X.	Restrictions on Disclosure by the IRS	7
XI.	Meetings between Agency and IRS Personnel	8
XII.	List of Individuals Authorized to Receive Tax Information	8
XIII.	Memoranda of Understanding	8
XIV.	Limitations of this Agreement	8
XV.	Reproduction Costs	9
XVI.	Modifications to this Agreement and Exhibits	9
XVII.	Approval Signatures	9
Exhibit A	Contacts and Addresses for Submitting Information to the IRS or Agency	A-1
Exhibit B	Information to be Sent to the Agency from the IRS	B-1
Exhibit C	Information to be Sent to the IRS from the Agency	C-1
Exhibit D	List of Current Memoranda of Understanding and Other Agreements	D-1

**I. Purpose and Definitions**

The purpose of this Agreement is to provide implementing procedures for the Agreement on Coordination of Tax Administration between the Internal Revenue Service and the Montana Department of Revenue.

The terms of this Implementing Agreement cover, but are not limited to, areas of early intervention and education, joint compliance, data exchanges, and technological advances and improvements.

This Implementing Agreement supersedes any and all other Implementing Agreements between the parties that predate this one. It does not supersede the Agreement on Coordination of Tax Administration between the parties. Notwithstanding this statement, this Implementing Agreement does not revoke or supersede current ad hoc Memoranda of Understanding, unless so specified herein.

For the purposes of this document the following definitions hereafter apply:

Agency will refer to the Montana Department of Revenue.

Basic Agreement will refer to the Agreement on Coordination of Tax Administration between the Montana Department of Revenue and the Internal Revenue Service.

Implementing Agreement or this Agreement will refer to this document entitled Implementing Agreement for the Agreement on Coordination of Tax Administration between the Montana Department of Revenue and the Internal Revenue Service.

IRS will refer to the Internal Revenue Service, U.S. Department of Treasury.

**II. IRS and Agency Liaison Officials**

Liaison officials have been designated to establish points of contact between the Agency and the IRS. The primary IRS liaison officials are the Disclosure Manager and the Governmental Liaison.

The IRS Disclosure Manager is the contact for matters of policy and procedure with regard to Agency requests for case specific federal returns and return information, any/all disclosures of federal returns and return information, and determinations of need and use of federal tax information.

The Governmental Liaison is the contact for developing and implementing local and area long-range planning and the design and establishment of joint FedState programs, including joint projects between the Agency and the IRS. The Governmental Liaison has responsibility for administering the Governmental Liaison Data Exchange Program. The IRS Disclosure Manager will be involved in any negotiation or planning that includes the disclosure of tax or other confidential information.

The primary liaison official for the Agency is the Chief Security Officer. Secondary liaison official is the Disclosure Specialist.

See Exhibit A for specific contact information.

**III. Information to be Exchanged on a Continuing Basis**

**01. Types of Returns and Return Information, Including Criteria and Tolerances, to be Sent to the Agency from the IRS**

a. See Exhibit B.

**02. Types of Returns and Return Information, Including Criteria and Tolerances, to be Sent to the IRS from the Agency**

a. See Exhibit C.

**03. Other Disclosures of Returns and/or Return Information**

When the IRS Disclosure Manager has a federal return and/or return information, which will not be transmitted to the Agency under other provisions of this Agreement, but which may be evidence of any inadvertent or intentional understatement of any state tax described in Section 3 of the Basic Agreement, the IRS Disclosure Manager shall contact the Agency liaison official and, without disclosing identifying information, describe the return and/or return information in sufficient detail to ascertain the Agency's need and potential use for the return and/or return information. If, in the judgment of the IRS Disclosure Manager, the Agency has a need and use for the return and/or return information, he/she shall transmit the return/return information to the Agency.

**IV. Requests for Information not Exchanged on a Continuing Basis**

**01. Specific Written Requests for Information**

The IRS and Agency personnel designated in writing by the IRS and the Agency are the only individuals authorized to request information not specifically outlined in this Agreement. Information may be transmitted via Secure Data Transfer (SDT), fax, U.S. Postal Service, a private delivery carrier, or in person. See Section IX for transmittal procedures. Such requests should be directed to the appropriate liaison official as follows:

a. The Agency will direct requests for federal returns or return information using Form 8796-A, Request for Return/Information (or its equivalent), to the IRS Disclosure Centralized Processing Unit. Refer to Exhibit A, 1 for address information.

- b. The Agency will direct written requests for the following items to the local Disclosure Manager. Refer to Exhibit A, 2 for address information.
  - Permission to redisclose in a criminal proceeding
  - Copies of certified documents for a criminal proceeding
  - Requests to speak to an IRS employee concerning a specific taxpayer
- c. The IRS will direct written requests for state tax information, including returns and/or return information, using Form 8796 (or its equivalent), to the appropriate Agency official. Refer to Exhibit A, 4 for address information.

Note: Use of the Form 8796 or 8796-A by the IRS or the Agency is encouraged, but not mandatory as long as the written request conforms to the form.

**V. Disclosures Concerning Agency Employees for Conduct Investigations**

Agency requests for returns and return information for conduct related investigations of Agency employees will be submitted to the IRS Disclosure Manager and will include the following information:

- a. Specific documentation regarding the particular conduct related reason why the disclosure of federal tax information is necessary.
- b. Specific documentation why the requested return(s) and/or return information is, or may be, relevant to the inquiry.
- c. Where applicable, copies of, or reference to specific rules of conduct, regulations, personnel directives, etc.

**VI. IRS Initiated Conduct Related Disclosure**

The IRS Disclosure Manager will contact the Agency liaison official and, without disclosing identifying information, describe the return and/or return information in sufficient detail to ascertain the Agency's need and potential use of the return and/or return information if:

- an Agency employee's federal return and/or return information evidences a violation, suspected violation, or potential violation of federal or state tax law, or statutes, regulations, or rules governing the conduct of Agency employees, and
- the violation or potential violation could damage the integrity of the tax administration system or,
- if the violation becomes known to the general public, could decrease public trust in the Agency, and,
- the return will not be transmitted to the Agency under other provisions of this Agreement.

If, in the judgment of the IRS Disclosure Manager the Agency has a need and use for the return and/or return information, he/she shall transmit the return and/or return information to the Agency.

**VII. Administering the Federal/State Electronic Filing Program**

During the course of administering the Federal/State Electronic Filing Program, it may become necessary for the IRS to disclose federal tax information to the Agency for state tax administration beyond the scope outlined in the respective Memorandum of Understanding. It is agreed that this Agreement shall constitute the requisite authorization (or request). The type of information may include, but is not limited to, tax information about return preparers and/or transmitters developed during suitability testing and incidental disclosures necessary during testing or problem resolution, and information on indications of fraud. Specific procedures will be developed as needs are identified and these will be in accordance with the provision of the existing agreements.

**VIII. Disclosure, Safeguards, and Record Keeping Requirements**

The Agency will maintain federal tax returns and return information separately from other information to the maximum extent possible to avoid inadvertent disclosures and to comply with the federal safeguards required by Internal Revenue Code (IRC) Section 6103(p)(4). The Agency will also abide by all other requirements of IRC Section 6103(p)(4).

All information obtained under this Agreement must be safeguarded in accordance with the Basic Agreement, as well as the safeguard requirements of IRC Section 6103(p)(4), as described in IRS Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.

The Agency recognizes and treats all Safeguards' documents and related communications as IRS official agency records that are the property of the IRS, that IRS records are subject to disclosure restrictions under federal law and IRS rules and regulations, therefore may not be released publicly under State Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. If the Agency determines that it is appropriate to share Safeguards' documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of federal tax information that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguards' documents and related communications are property of the IRS; they constitute IRS official agency records; any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal FOIA statute.

## **IX. Transmittal Procedures**

### **01. Disclosures by the IRS to the Agency**

Information may be transmitted via SDT, fax, U.S. Postal Service, a private delivery carrier, or in person. A count of documents by type will be recorded in a control file, fax transmittal, letter, or on Form 3210, Document Transmittal.

IRS Shipping Procedures will be followed when mailing federal returns and return information. Unless otherwise instructed, see Exhibit A for mailing addresses.

The Agency will acknowledge receipt of the information by signing a copy of the transmittal document and returning it to the IRS when delivery is via U.S. Postal Service, a private delivery carrier, or in person.

### **02. Disclosures by the Agency to the IRS**

Information may be transmitted via SDT, fax, U.S. Postal Service, a private delivery carrier, or in person. A count of documents by type will be recorded in a control file, fax transmittal, letter, or other transmittal document.

Unless otherwise instructed, state returns and return information will be disclosed to the IRS Disclosure Office shown in Exhibit A, 2.

The IRS will acknowledge receipt of the information by signing a copy of the document transmittal and returning it to the Agency when delivery is via U.S. Postal Service, a private delivery carrier, or in person.

## **X. Restrictions on Disclosure by the IRS**

The disclosure of certain returns and return information is prohibited by law notwithstanding the provisions of IRC Sections 6103 or 4102. They are as follows:

- a. Information obtained pursuant to tax conventions subject to IRC Section 6105;
- b. Wagering tax information as defined in IRC Sections 6103(o)(2) and 4424;
- c. Currency Transaction Reports filed under Title 31;
- d. Grand Jury information;
- e. Information obtained under immunity procedures (unless approved by the Director, Governmental Liaison, Disclosure, and Safeguards).

Disclosures by the IRS to the Agency will be made only after a determination that disclosure will not identify a confidential informant or seriously impair any federal civil or criminal tax investigation. If it is determined subsequent to disclosure that further use of the return/return information would identify a confidential informant or seriously impair a civil or criminal tax investigation, the IRS will request the Agency to discontinue use of the information.

Refer to the Basic Agreement, Section 3, Disclosure of Federal Returns and Federal Return Information, for additional requirements prior to disclosure of federal tax returns or federal tax return information.

**XI. Meetings between Agency and IRS Personnel**

Liaison officials and other IRS and Agency personnel will meet to review the success of existing exchange programs, examine the need and use of data being exchanged, explore additional areas where exchange would be beneficial, and determine whether the provisions of this Agreement require amendment or revision. The frequency of the meetings will be determined by the liaison officials based on local needs and circumstances.

**XII. List of Individuals Authorized to Receive Tax Information**

The parties agree to review their respective lists of employees authorized to receive federal or state tax information on at least a semi-annual basis and to promptly inform each other of additions and/or deletions to the lists. Changes will be sent to the Agency liaison official and the IRS Disclosure Manager.

**XIII. Memoranda of Understanding**

When the Agency and the IRS mutually agree in writing to a joint project that may be for a limited duration, or when the disclosure is authorized under an Internal Revenue Code section other than 6103(d), a description of the project, its purpose and the roles of the parties may be documented in a separate Memorandum of Understanding (MOU). No amendment to this Agreement is required in this event. However, such MOU may be incorporated into this Agreement by revising Exhibit D.

The Governmental Liaison has primary responsibility for the development and coordination of MOUs. The IRS Disclosure Manager will be involved in the approval process for all MOUs.

MOUs must be signed by the IRS Operating Division (by an official with signature and Delegation Order 11-2 authority) having jurisdiction for the project/exchange and the head of the Agency.

**XIV. Limitations of this Agreement**

The terms of this Agreement are not intended to alter, amend or rescind any provision of the Basic Agreement now in effect between the Agency and the IRS. In case of conflict, the provisions of the Basic Agreement will govern, and conflicting provisions of this Agreement will be null and void.

The terms of any MOU are not intended to alter, amend or rescind any provision of this Agreement. In the event of any conflict, this Agreement will take priority unless such



discrepancy is noted in the MOU and the MOU is signed by the same officials who signed this Agreement.

**XV. Reproduction Costs**

It is mutually agreed that the parties signing this Agreement will not charge one another for costs incurred in production or reproduction of information provided under this Agreement.

**XVI. Modifications to this Agreement and Exhibits**

If the need for any of the information being exchanged ceases, each agency shall notify the other to discontinue submission within 30 calendar days of the determination.

It is understood by the parties to this Agreement that the exchange of tax information is not a static program and that changes may be necessary from time to time. Annually, or as needed, the IRS and Agency liaison officials will determine if changes to exhibits are needed. If changes are needed, the Governmental Liaison will make changes to the applicable exhibit, place a revision date in the upper right hand corner of the exhibit, and provide a copy to the Agency liaison official.

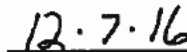
If it becomes necessary to amend or supersede this Agreement, the amendment or revision will be reduced to writing and signed by the parties to this Agreement.

The parties anticipate there may be changes to the titles and/or responsibilities of officers and employees designated within this Agreement. In the event of such changes, any actions that may be taken under this Agreement by said officers or employees may be taken by any officer(s) or employee(s) the parties determine to have succeeded to the relevant portions of said employee's authorities or responsibilities. Such changes will not require modification of this Agreement.

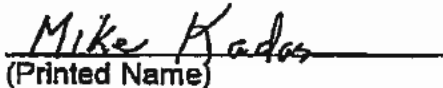
**XVII. Approval Signatures**



Signature



Date

  
(Printed Name)

Director

Montana Department of Revenue



Phyllis T. Grimes

Digitally signed by Phyllis T. Grimes  
DN: cn=US, o=U.S. Government, ou=Department of the  
Treasury, ou=Internal Revenue Service, ou=People,  
serialNumber=399023, c=Phyllis T. Grimes  
Date: 2017.01.26 14:14:00 -0500

Signature

01/26/2017  
Date

Phyllis T. Grimes

(Printed Name)

Director, Governmental Liaison, Disclosure, and Safeguards  
Internal Revenue Service

**Exhibit A – Contacts and Addresses for Submitting Information to the IRS or Agency**

1. Form 8796-A requests from the Agency to the IRS should be faxed to 877-891-6035 or sent to the following address unless otherwise instructed:

Internal Revenue Service  
Disclosure Centralized Processing Unit  
Stop 93A  
Post Office Box 621506  
Atlanta, GA 30362-3006

Exceptions: Form 8796-A requests should be faxed or mailed to the local Disclosure Office (fax number and address below) if one of the following situations applies:

- Need permission to redisclose in a criminal proceeding
- Require certified documents for a criminal proceeding
- Need to speak to an IRS employee concerning a specific taxpayer

2. IRS Disclosure Manager – Byron D. Endo

Internal Revenue Service  
1973 N. Rulon White Blvd., MS 7000  
Ogden, UT 84404  
Phone Number: (801) 612-4763  
Fax Number: 855-205-9334  
Email Address: byron.d.endo@irs.gov

3. IRS Governmental Liaison – Jan Walker

50 South 200 East, MS 4108  
Salt Lake City, UT 84111-1617  
Phone Number: (801) 799-6969  
Fax Number: 855-205-9338  
Email Address: jan.walker@irs.gov

4. Form 8796 requests from the IRS to the Agency should be addressed to the following recipient unless otherwise instructed and then mailed or faxed.

Liaison Official – Margaret Kauska, Chief Security Officer  
Montana Department of Revenue  
Security Office  
P.O. Box 7701  
Helena, MT 59604  
Fax Number: (406) 444-4375

5. Agency Contact – Margaret Kauska, Chief Security Officer  
Montana Department of Revenue  
Security Office  
P.O. Box 7701  
Helena, MT 59604  
Phone: (406) 444-9535  
Fax: (406) 444-4375  
Email Address: mkauska@mt.gov

Secondary Contact – Jo Grossman, Disclosure Specialist  
Montana Department of Revenue  
Security Office  
P.O. Box 7701  
Helena, MT 59604  
Phone Number: (406) 444-0365  
Fax Number: (406) 444-4375  
Email Address: jgrossman@mt.gov

6. Appeals reports and Tax Court decisions for individual income tax, corporate income tax, partnership, subchapter S corporations and fiduciary, estate, employment and unemployment information in Exhibit B will be mailed to the following address:

Montana Department of Revenue  
Security Office  
Attn: Chief Security Officer  
P.O. Box 7701  
Helena, MT 59604

Street Address for Private Delivery, e.g., UPS/Fed Ex:

Montana Department of Revenue  
Security Office  
Attn: Chief Security Officer  
125 North Roberts Street  
Helena, MT 59601

**Exhibit B – Information to be Sent to the Agency from the IRS**

**1. Information Provided to the Agency Under the Governmental Liaison Data Exchange Program**

The Agency may participate in the Governmental Liaison Data Exchange Program (GLDEP). The items to be exchanged will be selected annually on the GLDEP Enrollment Form along with a Need and Use justification statement. Refer to the annual enrollment forms for a listing of extracts being provided to the Agency.

The GLDEP Examination Operational Automation Database (EOAD) Extract provides the individual, corporate, partnership and subchapter S corporation Campus and Examination audit reports. The criteria for these reports are listed below.

**2. Criteria for Audit Reports Provided in the EOAD Extract and Other Information Provided by the IRS**

Audit reports, Appeals reports, Tax Court decisions, and other federal tax information will be provided based on the criteria below. For multi-year paper reports where only one year meets the criteria the entire report will be provided with no deletions. For employment reports that have multiple form types, where one form meets the criteria the entire report will be provided with no deletions.

**A. Individual Income Tax:**

- i. All examinations except **Tolerance**
- ii. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- iii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court.

**B. Corporate Income Tax:**

- i. All examinations except **Tolerance**
- ii. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- iii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court.

**C. Partnership:**

- i. All examinations except **Tolerance**
- ii. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- iii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court.

**D. Subchapter S Corporations:**

- i. All examinations except **Tolerance**
- ii. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- iii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court.

**E. Fiduciary Returns:**

- i. All Examination reports, including the Explanation of Items.
- ii. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation, with a **Tolerance**
- iii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court.

**F. Estate Tax Returns:**

- i. All non-examined estate tax closing letters.
- ii. All examined estate tax closing letters and/or Form 706 Examination reports including the Explanation of Items, with a **Tolerance**
- iii. All Form 706 Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- iv. All Form 706 Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court.
- v. All Form 706A Examination reports, including the Explanation of Items, involving recapture under IRC 2032A.
- vi. All Form 706A Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation, involving recapture under IRC 2032A.
- vii. All Form 706A Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court, involving recapture under IRC 2032A.

**G. Employment Tax (Forms 941, 943):**

- i. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- ii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court when a worker is being reclassified as an employee.

**H. Unemployment Tax:**

- i. All Appeals reports, including the Appeals Case Memorandum, Examination Report and Settlement Computation.
- ii. All Tax Court decisions, including the Appeals Case Memorandum, Examination Report, Settlement Computation, and Decision Document or Order entered by Tax Court when a worker is being reclassified as an employee.

- I. **Suspicious Filers:** Return Integrity and Compliance Services (RICS) will provide prior year individual confirmed ID theft/refund fraud return information, current year questionable return information, and suspect email domain lists to assist in identifying potential fraudulent state returns and/or refunds or other schemes. The list will include TINs, names, addresses, tax years, refund amount, bank routing numbers, bank account numbers, PTINs, EFIN, IP addresses and federal adjusted gross income. If IRS identifies additional individual data that may possibly assist in identifying suspicious filers, ID theft, refund fraud, etc., it may be provided.

**Exhibit C – Information to be Sent to the IRS from the Agency**

1. **Suspicious Filers:** The Agency will provide listings and/or documents of taxpayers and/or return preparers identified as having potential fraudulent refunds, identify theft, suspicious filing, or other schemes.
2. **State Audit or Appeals Reports:** The Agency will provide audit/appeals reports per the State Audit Report Program Criteria Chart provided by the Governmental Liaison.
3. **Other State Returns and Return Information:** If the Agency identifies a state return and/or return information that would not otherwise be transmitted to the IRS under this Agreement, but which may be evidence of any intentional or inadvertent understatement or violation of any federal tax described in this Agreement, the Agency shall notify the Governmental Liaison.

**Exhibit D – List of Current Memoranda of Understanding and Other Agreements**

1. 1040 MeF Federal/State Electronic Filing Program MOU effective 11/20/2009
2. 1065 Federal/State Electronic Filing Program MOU effective 1/11/2008
3. 1120 Federal/State Electronic Filing Program MOU effective 1/11/2008
4. Detection and Prevention of Identity Theft Tax Refund Fraud MOU effective 6/25/2015
5. Form 1041 Modernized Electronic Filing Federal/State Program MOU effective 11/6/2013
6. IRS e-file Participant Extracts MOA effective 7/26/2007
7. Need and Use Justification Statement for Use of Federal Tax Information for Tax Modeling, Revenue Estimation or other Statistical Purposes effective 7/7/2014 until expiration on 7/7/2017
8. Transcript Delivery System (TDS) MOU effective 4/6/2006



# **Agreement of Tax Administration**

**Between**

**The Montana Department of Revenue**

**And**

**The Internal Revenue Service**



## **Agreement on Coordination of Tax Administration**

### **SECTION 1. Introduction**

1.1 This agreement provides the basis for coordination of Federal and State tax administration. The parties to this agreement will explore and adopt mutually acceptable techniques and modes of exchange most beneficial to improved tax administration with the least possible interruption of their respective operating routines and with strict adherence to laws, regulations, and rules for protecting the confidentiality of exchanged information.

1.2 This agreement may be supplemented by an implementing agreement, prescribing the nature, quantity and mechanics for the continuous exchange of tax information, including criteria and tolerances for selection of tax returns and return information as well as other cooperative activities. If an implementing agreement has been approved, it should be consulted for more detailed information about specific working arrangements and operational procedures for the exchange of tax information authorized by this agreement. All provisions contained in implementing agreements must be consistent with the terms and conditions in this agreement. In any situation where a conflict arises between the provisions of this agreement and the implementing agreement, the terms of this agreement will govern.

### **SECTION 2. Definitions**

For purposes of this agreement, the following definitions apply:

2.1 Agency. The term "Agency" means Montana Department of Revenue.

2.2 IRS. The term "IRS" means the Internal Revenue Service, U.S. Department of Treasury.

2.3 State Audit Agency. The term "State Audit Agency" is defined in the same manner as provided in IRC Section 6103(d)(2)(B). State Audit Agency means Legislative Audit Division.

2.4 State. The term "State" means the State of Montana.

2.5 Agency Representative. The term "Agency Representative" means an Agency officer or employee designated in writing by the head of the Agency, to the designated IRS Disclosure Manager, as an individual who is to inspect or receive Federal returns or Federal return information on behalf of the Agency as provided by IRC Section 6103(d), but only so long as the duties and employment of such officer or employee require access to Federal returns and Federal return information for purposes of State tax administration.

**2.6 IRS Representative.** The term "IRS Representative" means an officer or employee of the IRS who has been designated in writing to the head of the Agency by the designated IRS Disclosure Manager, as an individual who is to inspect or receive State returns or State return information on behalf of IRS, but only so long as the duties and employment of such officer or employee require access to State returns and return information for the purpose of Federal tax administration.

**2.7 Federal Return.** The term "Federal Return" is defined in the same manner as provided in IRC Section 6103(b)(1).

**2.8 Federal Return Information.** The term "Federal Return Information" is defined in the same manner as provided in IRC Section 6103(b)(2). However, "Federal Return Information" does not include that information in the hands of the State that is obtained by means wholly from sources independent from the IRS.

**2.9 State Return.** The term "State Return" means any tax or information return, declaration of estimated tax, or claim for refund required by or provided for or permitted under the provisions of the internal revenue laws, or related statutes, of the State, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of, the return so filed.

**2.10 State Return Information.** The term "State Return Information" means a taxpayer's identity, the nature, source, or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer's State return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the Agency with respect to a State return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under the internal revenue laws, or related statutes, of the State, for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

**2.11 Inspection.** The term "Inspection" means any examination of a return or return information.

**2.12 Disclosure.** The term "Disclosure" means the making known to any person in any manner whatever a return or return information.

**2.13 State Tax Administration.** The term "State Tax Administration"

**(a) Means:**

(i) The administration, management, conduct, direction, and supervision of the execution and application of the revenue laws, or related statutes of the State, and

(ii) The development and formulation of State tax policy relating to existing or proposed internal revenue laws, or related statutes of the State, and

(b) Includes assessment, collection, enforcement, litigation, and statistical gathering functions under such laws or statutes.

2.14 Code. The term "Code" means the Internal Revenue Code of 1986, as amended.

### **SECTION 3. Disclosure of Federal Returns and Federal Return Information**

3.1 Pursuant to the laws of the State, the Agency is charged with the responsibility for the administration of property, individual income, corporate, business, alcoholic beverages, cigarettes and tobacco, estates, public utilities, natural resource, bad debts, centrally assessed, disregarded entity, energy, lodging, partnership, railcar, pass through, telecommunication, unclaimed property. Federal returns and Federal return information received from IRS will be used for the purpose of, and only to the extent necessary in, State tax administration.

3.2 This agreement constitutes the requisite authorization pursuant to IRC Section 6103(d)(1) for IRS to disclose to, and permit inspection by, an Agency Representative of Federal returns and Federal return information relating to taxes imposed by Chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 51, 52 and 36(D) of the Code.

3.3 Upon the occurrence of any change in employment, duties, or relevant matters affecting an Agency Representative's right of access to Federal returns and Federal return information or status as Agency Representative, the head of the Agency shall promptly advise in writing the designated IRS Disclosure Manager that such individual is no longer an Agency Representative.

3.4 An Agency Representative to whom Federal return or Federal return information has been disclosed may thereafter disclose such return or return information to:

(a) Another employee of the Agency, for the purpose of and only to the extent necessary in the administration of the State tax laws for which the Agency is responsible.

(b) A person described in IRC Section 6103(n) or to any officer or employee of such person, solely for the purpose of State tax administration and in a manner consistent with applicable regulations, published rules or procedures, or written communications. Additionally, pursuant to Treasury Regulation 301.6103(n)-1, whenever Federal tax returns and return information are to be disclosed to a person described in IRC Section 6103(n), the above named State Agency will notify the IRS prior to the execution of any agreement to disclose to such person, but in no event less than 45 days prior to the disclosure of that information to the person.

(c) A legal representative of the Agency personally and directly engaged in, and for use in, preparation for a civil or criminal proceeding (or investigation which may result in a proceeding) before a State administrative body, grand jury, or court in a matter involving State tax administration, if the returns and return information satisfy one or more of the criteria established in IRC Sections 6103(h)(4)(A), 6103(h)(4)(B) or 6103(h)(4)(C).

(d) An officer or employee of the State Audit Agency for the purpose of and only to the extent necessary in making an audit of the State Tax Agency.

3.5 A Federal return or Federal return information may be disclosed in a judicial or administrative proceeding pertaining to State tax administration, but only if the same criteria established in IRC Sections 6103(h)(4)(A), 6103(h)(4)(B) or 6103(h)(4)(C) are met and only to the extent State tax matters remain at issue.

3.6 Notwithstanding any other provision of this section, IRS will not disclose Federal return or Federal return information under this section if such disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation.

(a) The Agency agrees that neither it nor its legal representatives will make any further use or disclosure of a Federal return or Federal return information disclosed to an Agency Representative by IRS if IRS notifies the head of the Agency in writing that such further use or disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation.

(b) The Agency further agrees that prior to the disclosure of any Federal return or Federal return information in a State criminal judicial proceeding or to any party other than the taxpayer or his/her designee in a State administrative proceeding as provided by paragraph 3.5 of this agreement, the head or legal representative of the Agency will notify in writing the designated IRS Disclosure Manager, from whom the return or return information was received, of the intention to make such disclosure.

(c) No officer, employee or legal representative shall so disclose a Federal return or Federal return information in such State judicial or administrative proceeding if the designated IRS Disclosure Manager or other IRS official, within 30 days following receipt of such written notice, informs the head or legal representative of the Agency that such disclosure would identify a confidential informant or seriously impair a Federal civil or criminal tax investigation.

3.7 Additionally, the Agency agrees that it will notify the IRS when, during an audit of the Agency by the State Audit Agency, Federal returns and Federal return information are disclosed to the State Audit Agency and such information is made part of the State Audit Agency's work papers.

#### **SECTION 4. Disclosure of State Returns and Return Information**

4.1 This agreement constitutes the requisite authorization for the Agency to disclose to, and permit inspection by, IRS Representatives of State returns and State return information for the purpose of, and only to the extent necessary in the administration of the internal revenue laws, or related statutes, of the United States.

4.2 Nothing in this agreement shall be construed as authority for the Agency to disclose State returns and State return information where such disclosure would be contrary to State law.

4.3 Upon the occurrence of any change in employment duties, or other relevant matters affecting an IRS Representative's right of access to State returns and State return information or status as an IRS Representative, the designated IRS Disclosure Manager shall promptly advise the Agency in writing that such individual is no longer an IRS Representative.

#### **SECTION 5. Other Cooperative Activities**

5.1 Subject to the restrictions and other provisions of this agreement and the availability of enforcement resources, the Agency and IRS will develop cooperative return selection and examination programs with the objective of avoiding unnecessary duplication of Federal and State audit coverage.

5.2 Information other than Federal or State returns and return information, which the Agency and IRS may deem to be relevant or useful to the administration of State and Federal tax laws, may be exchanged pursuant to arrangements made by the Agency and IRS.

5.3 In addition to the exchange of tax and other information, the Agency and IRS will, to the extent feasible, extend to each other assistance in other tax administration matters. This may include such activities as taxpayer assistance, training of personnel, special statistical studies and compilations of data, development and improvement of tax administration systems and procedures, and such other activities as may improve tax administration.

#### **SECTION 6. Safeguards and Other Requirements**

6.1 Recipient agencies that legally receive federal tax information (FTI) directly from either the IRS or from secondary sources (e.g., Social Security Administration [SSA], Office of Child Support Enforcement [OCSE]), pursuant to IRC 6103 or by an IRS-approved exchange agreement, must maintain all federal tax returns and return information (FTI) sourced from the IRS in accordance with IRC Section 6103(p)(4) and comply with the safeguards requirements set forth in Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, which is the IRS published guidance for security

guidelines and other safeguards for protecting returns and return information pursuant to 26 CFR 301.6103(p)(4)-1. IRS safeguarding requirements include, but are not limited to:

(a) The Agency will establish a central point of control for all requests for and receipt of federal tax returns and return information, and maintain a log to account for all subsequent disseminations and products made with/from that information, and movement of the information until it is destroyed.

(b) The Agency will establish procedures for secure storage of federal tax returns and return information consistently maintaining two barriers of protection to prevent unauthorized access to the information, including when in transit.

(c) The Agency will consistently label federal tax returns and return information obtained under this Agreement to make it clearly identifiable and to restrict access by unauthorized individuals. Any duplication or transcription of federal tax returns and return information creates new records, which must also be properly accounted for and safeguarded. Federal tax returns and return information should not be commingled with other Agency records unless the entire file is safeguarded in the same manner as required for federal tax returns and return information and the FTI within is clearly labeled.

(d) The Agency will restrict access to federal tax returns and return information solely to officers and employees of Agency whose duties require access for the purposes of carrying out this Agreement. Prior to access, Agency must evaluate which employees require such access. Authorized individuals may only access federal tax returns and return information to the extent necessary to perform services related to this Agreement. The Agency will also adhere to and comply with IRS background investigation requirements indicated in Publication 1075.

(e) Prior to initial access to FTI and annually thereafter, the Agency will ensure that employees and officers that will have access to federal tax returns and return information receive awareness training regarding the confidentiality restrictions applicable to the federal tax returns and return information and certify acknowledgement in writing that they are informed of the criminal penalties and civil liability provided by IRC Sections 7213, 7213A and 7431 for any willful disclosure or inspection of federal tax returns and return information that is not authorized by the IRC. The Agency officers and employees who inspect or disclose federal tax returns and return information obtained pursuant to this Agreement in a manner or for a purpose not so authorized by IRC are subject to the criminal sanction provisions of IRC Sections 7213 and 7213A, and 18 U.S.C. Section 1030(a)(2), as may be applicable. In addition, the Agency could be required to defend a civil damages action under IRC Section 7431.

(f) The Agency will submit an annual Safeguard Security Report (SSR) to the Office of Safeguards by the submission deadline specified in Publication 1075 to provide an update on safeguarding activities during the reporting period and provide Head of Agency certification that the SSR addresses all Outstanding Actions identified by the Office of Safeguards from Agency's prior year's SSR; accurately and completely reflects Agency's



current environment by full description of the computer system and security controls implemented for the receipt, storage, processing and transmission of FTI; accurately reflects the security controls in place to protect the FTI and of the Agency's commitment to assist the Office of Safeguards in the joint effort of protecting the confidentiality of FTI; report all data incidents involving FTI to the Office of Safeguards and TIGTA timely and cooperate with TIGTA and Office of Safeguards investigators, providing data and access as needed to determine the facts and circumstances of the incident; support the Office of Safeguards on-site review to assess Agency compliance with Publication 1075 requirements by means of manual and automated compliance and vulnerability assessment testing, including coordination with information technology (IT) divisions to secure pre-approval, if needed, for automated system scanning and to support timely mitigation of identified risk to FTI in Agency's Corrective Action Plan (CAP) for as long as Agency maintains federal tax returns and return information. Required reports will be transmitted in electronic format and on the template provided by Office of Safeguards using an IRS-approved encryption method.

(g) The Agency will ensure that federal tax returns and return information is properly destroyed or returned to the IRS when no longer needed based on established Agency record retention schedules.

(h) The Agency will conduct periodic internal inspections of facilities where federal tax returns and return information is maintained to ensure IRS safeguarding requirements are met and will permit the IRS access to such facilities as needed to review the extent to which the Agency is complying with the IRC Section 6103(p)(4) requirements of this section.

6.2 This Agreement covers secure electronic transmission of Federal tax returns and return information to the Agency provided the Agency's computer systems are compliant with Section 3544(a)(1)(A)(ii) of the Federal Information Security Management Act of 2002 (FISMA) or National Institute of Standards and Technology (NIST) Special Publication 800-53 standards and guidance for security of data at the moderate impact level.

6.3 Any creation or receipt of Federal tax returns and return information in paper format must also be fully disclosed in the Agency's SSR. Required security controls associated with the receipt, processing, and storage of any Federal tax returns and return information received in paper format are specified in Publication 1075.

6.4 The Agency officers and employees may have access to federal tax returns and return information obtained under this Agreement. Agency may not allow contractor personnel access to federal tax returns and return information for any purpose unless expressly authorized by the IRC. When contractor access to FTI is expressly authorized by the IRC, Agency must ensure that contracts with contractors and subcontractors performing work involving federal tax returns and return information contains specific language requiring compliance with IRC Section 6103(p)(4) and Publication 1075 safeguard requirements and enforces Agency's right to, and permits IRS access to, contractor and subcontractor facilities to conduct periodic internal inspections where federal tax returns and return information is maintained to ensure IRS safeguarding requirements are met.



6.5 IRS will conduct periodic safeguard reviews of the Agency to assess whether security and confidentiality of federal tax returns and return information is maintained consistent with the safeguarding protocols described in Publication 1075, the Agency's SSR and in accordance with the terms of this agreement. Periodic safeguard reviews will involve the inspection of Agency facilities and contractor facilities where FTI is maintained; the testing of technical controls for computer systems storing, processing or transmitting FTI; review of Agency recordkeeping and policies and interviews of Agency employees and contractor employees as needed, to verify the use of FTI and assess the adequacy of procedures established to protect FTI. The scope of the safeguards review will include an in depth review of the logical computer security controls and configuration of the Agency's operating systems and telecommunication devices that receive, process, transmit, store, or dispose of FTI. The safeguard review is limited to the safeguarding of FTI and will not evaluate the Agency's administration of any state program. During the course of a safeguard review, all physical and logical controls are subject to review by IRS personnel or their designees. As such, access to state, federal and municipal facilities will be granted to the aforementioned personnel. This also applies to any such contractor facility that receives, processes, or stores FTI. Therefore, reviewer access to facilities and systems for the purpose of the safeguard review is essential and required. Accesses of this nature are to be facilitated by the recipient Agency.

6.6 At the conclusion of the safeguard review, a report and Corrective Action Plan (CAP) will be given to the Agency that identifies the items or findings requiring correction to improve the safeguarding of FTI in accordance with Publication 1075 as a result of an IRS Office of Safeguards review. For each finding, the evaluated risk for potential loss, breach or misuse of FTI establishes a recommended timeframe for resolution. The risk category will be noted with each finding in the report and will assist the Agency in establishing priorities for corrective action. The Agency must submit a CAP update semi-annually until all findings are accepted and closed by the Office of Safeguards. The CAP must include a brief explanation of actions already taken or planned to in the resolution of the finding. For all outstanding findings, the Agency must detail planned actions and associated milestones for resolution.

6.7 The Agency recognizes and treats all Safeguards documents and related communications as IRS official agency records; that they are property of the IRS; that IRS records are subject to disclosure restrictions under federal law and IRS rules and regulations and may not be released publicly under state Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. If the Agency determines that it is appropriate to share Safeguard Documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of FTI that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguard Documents and related communications are property of the IRS; that they constitute IRS official agency records; that any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. Federal agencies in receipt of FOIA requests for safeguards documents must forward them

to IRS for reply.

### **SECTION 7. Limitations**

7.1 Pursuant to the provisions of IRC Section 6103(p)(2), and of State law, if any, IRS and the Agency may charge each other a reasonable fee for furnishing returns and return information under the terms of this agreement. IRS and the Agency may agree not to charge each other for the costs of routine reproduction of returns and return information mutually exchanged.

7.2 Under no circumstances will the Agency permit any Federal return or Federal return information to be inspected by, or disclosed to an individual who is the chief executive officer of the State or any person other than one described in Section 3 of this agreement.

7.3 Notwithstanding any other provision of this agreement, IRS will not disclose or make known in any manner whatever to any person described in Section 3 of this agreement:

(a) Any original, copy, abstract of any return, payment, or registration made pursuant to Chapter 35 of the Code (relating to taxes on wagering).

(b) Any record required for making any such return, payment, or registration made or required pursuant to Chapter 35 which IRS is permitted by the taxpayer to examine or which is produced pursuant to IRC Section 7602 (relating to the examination of books and witnesses).

(c) Any information obtained by the exploitation of any such return, payment, registration, or record made or required pursuant to Chapter 35.

7.4 Notwithstanding any other provision of this agreement, IRS will not disclose or make known in any manner to any person described in Section 3 of this agreement, information that was obtained pursuant to a tax convention between the United States and a foreign government.

### **SECTION 8. Officials to Contact for Obtaining Information**

8.1 Requests by authorized officers and employees of the state:

(a) Requests by the Agency for Federal returns or Federal return information should be made to the officials named in the implementing agreement or to the officials below if an implementing agreement has not been executed.

(b) Requests by the Agency for Federal return information in electronic or paper form should be made to the designated IRS Disclosure Manager who will be coordinating the requests

with Headquarters.

(c) Requests for physical inspection or copying of Federal returns, or requests for audit abstracts and reports pertaining to such returns, showing addresses within the State should be made to the designated IRS Disclosure Manager, who will be responsible for making the proper arrangements for inspection or copying.

(d) Requests by the head of the Agency or his/her designee for Federal returns of taxpayers or Federal return information relating to taxpayers showing addresses outside the State should be made to the designated IRS Disclosure Manager unless viable separately stated procedures for such requests are specified within the implementing agreement.

8.2 Requests by authorized officers and employees of the IRS for inspection or copying of State returns and State return information should be made to the officials named in the implementing agreement supplementing this agreement, or to the IRS Liaison if an implementing agreement has not been executed.

#### **SECTION 9. Termination or Modification of Agreement**

9.1 The provisions of the agreement are subject to provisions of the Code, implementing regulations, published procedures, and to the provisions of State statutes and regulations. This agreement may be terminated or modified at the discretion of IRS or the Agency due to changes in Federal or State statutes and regulations or whenever in the administration of Federal or State laws that action seems appropriate.

9.2 Any unauthorized use or disclosure of Federal returns or Federal return information furnished pursuant to this agreement or inadequate procedures for safeguarding the confidentiality of such returns and return information, also constitutes grounds for termination of this agreement and the exchange of information there under, subject to the rights of administrative appeal as provided by regulations prescribed by IRC Section 6103(p)(7).

9.3 Notwithstanding any other provision of this agreement, no Federal return or Federal return information shall be disclosed by IRS to any person described in Section 3 of this agreement if the requirements of IRC Section 6103(p)(8) are not met.

**SECTION 10. Approval Signatures**

  
\_\_\_\_\_  
Signature

Mike Kadas

\_\_\_\_\_  
(Printed Name)

Director

Montana Department of Revenue

9.20.17  
Date

Edward T. Killen

Digitally signed by Edward T. Killen  
DN: c=US, o=U.S. Government, ou=Department  
of the Treasury, ou=Internal Revenue Service,  
ou=People, serialNumber=429031, cn=Edward T.  
Killen  
Date: 2017.10.30 10:05:27 -0400

\_\_\_\_\_  
Signature

Edward T. Killen

\_\_\_\_\_  
(Printed Name)

Chief Privacy Officer

Internal Revenue Service

\_\_\_\_\_  
Date